

Discourt. Directing me

A
DISCOVERSE
OF THE
STATE ECCLESIA-
STICALL OF THIS
Kingdome, in relation to the Civill.

2. Considered vnder three CONCLUSIONS.

p: 43.

63. With a DIGRESSION discussing
some ordinary Exceptions against
Ecclesiasticall Officers.

p: 30.

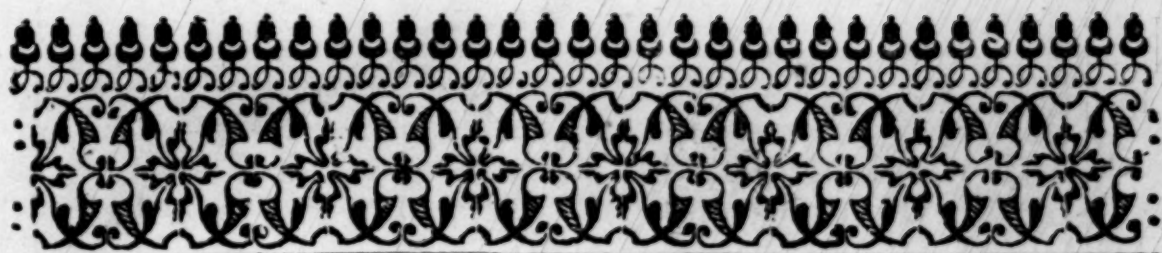
By C. D.



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Discord
is made



TO THE RIGHT HO-
NOVRABLE WILLIAM EALRE
Of Salisbury, Viscount Cranburne, Lord
Cecyll of Esendon, Knight of the most Illu-
strous order of the Garter, and one of his Ma-
jesties most honourable Privie Councell.



MY It please your honour
to accept this present dis-
course as an acknowledg-
ment of your Lordships favour to-
ward

your observant Chaplaine,

Calybute Downinge.



ERRATA.

PAGE 8. marg. *for text, read tit.* p. 15. marg. *Clayman, r. Clapmar.* p. 17. l. 15. *with state, r. with the state.* p. 21. l. 28. *sic stantibus, r. exstantibus* p. 35. l. 18. *ordinar. r. ordinario.* p. 39. l. 1. *adde à farlo.* p. ib. *Anglitterra, r. Anghilterra.* p. 52. l. ib. 506. r. 56. p. 54. marg. *Hallan des affaires.* p. 55. l. 8. *Common, r. Cannon Law.* p. 57. l. 18. *Conatus, r. Canutus.* p. 59. marg. *Francum, r. ararium.* p. 67. l. 24. *vacante prudentissimus, r. vacante; sed prudentissimus.* p. 94. l. vlt. *dele Oskobone vpon.*





CONCLVSION I.

That the present State Ecclesiasticall is most convenient, and best agreeing with the Civill.



With what care and cost States and Kingdomes, which vphold and deriue all happinesse to man, as he is a sociable and a feeble creature, should be preserved, none will deny; especially since they are so subiect to decay, and the causes of their corruptions so many. For the best tempered common-wealth is not of any constant continuance, but full of changes, and those at last, will after much interchange, driue it to a full and fatall period. It must therefore be the care of the present age, to see that it receiue no detriment while they are in it; for they may be so orderly, as to worke no distemper, but conserue it in health and wealth, or at least keepe it from decaying so fast, that hauing some space to fall in, it may recouer, or they haue time to leaue it, and not fall with it, nor that fall vpon them. Now the best, and all that the passing, present generation can doe, is either to keep things in primitiue order, or to reforme them to it. The first of which is difficult to continue, the other dangerous if long discontinued. Yet Kingdomes must be conserued,

Senec. Epist.
117.

Polybius hist.
lib. 6.

served, by the same meanes they were first establisht. This labour, and care then will be to best purpose bestowed vpon those parts which are most necessary, and vphold the rest as essentiall and fundamentall, being the principles of the intrinsicall, originall good : δύο ἀρχαὶ πάσης πολιτείας, ἑστὶν καὶ νόμοι, or vpon those that secure these, *διὸν γὰρ ὄντων δὲ ὧν σωζέται πολίτευμα πᾶν*. Now that which is the only infallible ground of these, must needs be principally respected by those that are vndertakers for the publick good ; and that ground is true religion. For though ill manners are *per accidens* the cause, or rather the occasion of making good lawes, yet they are better in the executing, best when they are obeyed. Now good manners cause obedience, and religion naturally begets good manners. But religion cannot subsist without publicke exercise and action, and so the requisites of it are times, places, and some persons who ought to be set apart, and wholly and only employed in it ; and they must be in the common-wealth. Therefore seeing it is necessary to haue a religion to preserve the common-wealth, it is by consequent as needfull, to haue preservers of religion, that may not overturne the common-wealth by over-ruling religion. Wherefore the choyse of them need to be such, that seeing they must be in the common-wealth of necessity, they may be of the common-wealth for vniuersal safety. And yet they are to be distinguished by state, and order, to avoyd confusion ; nor doth their distinction enforce any such forme, after which they must governe, as may be inconvenient to the publicke civill state, whereby they are to be governed. The care then of the wisest must be either to preserve, or restore that forme of the Clergie, which is most agreeing with the Civill State, and that will be the meanes to prolong the age of the state, by preserving concord amongst societies ; which, though at last it come to an end, yet it may out-last our dayes, that

wee

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we be not vnhappy in the ruine ; for it is not the infelicitie of States which haue long flourished to decay, or be destroyed, but the unhappinesse of those men, whole hap it is then to liue, and not when they did flourish. Now every form of a Clergie will not fit, but according to diuers countries, they haue beene severall, suiting to the times, places, and people. The first was the originall, domesticall discipline in private families, before God made choyse, and actually seperated a nation to himselfe. Then followed the Leviticall Nationall regiment, compounded and composed of, and according to the ceremoniall and judiciall Lawes. Both these formes were not onely by divine permission, but also by injunction ; yet not perpetuall nor vniversall. Neither of these then are the government wee must chuse, because that manner of exercising religion is antiquated. Wee must then consider of a forme, which may be conformable to the present practise of true religion, in relation to Gods revealed Will, which may withall be suitable, and sorting with this present state, that so they may vphold each other ; which forme, though it be not according to Gods expresse mandate in some particulars, yet it is not against it, but with his permission of approbation in all points. Now in this choyce, wee must consider our owne forme of Civill government, and whether that were imposed vpon vs by conquest, or by our owne consent ; if by free consent, and of long continuance, it will with more ease and desire be preserved, and with greatest danger altered ; if by conquest, the more Charters of priuiledges are granted to vs vnder it, the more it is endeared to vs, and esteemed happy ; but our forme of state is a free Monarchie, erected and protected by free consent, and of long continuance, not imposed but confirmed and reformed to the first freedome by a happy conquest, and endeared vnto vs by many Charters of wholsome priuiledges.

*Guiccardine
hypomneses
polit. 141.*

Therefore we must seeke or keepe such a forme of state Ecclesiasticall, as may best accord with our forme of Civill policie,

§. 2. This present State Ecclesiasticall is the forme that best agrees with the Civill State. That it is not against the Law of God, I will not goe about to proue, because I hope none will question it : neither that it was the primitive, and should still be the government of the present visible Church, because that is already proved without all contradiction by many most judicious and orthodoxe Divines: But my vndertaking is (as farre as God shall giue mee vnderstanding) to discourse, how it is most agreeable with this Kingdome. All States haue alwayes endeavoured, as to haue a religion, so to frame the exercise of it according to their owne dispositions: but some with more doting indulgence, haue at last changed it into that which they were most naturally disposed to, and did not alter and order their inclinations by it. As the foure grand Monarchies, the Chaldean with whom the Persian may well be joyned, these turned the acts of religion into philosophicall considerations, enquiries, and explications of nature. The Egyptians (a principall branch of these Monarchies, and from whom some thinke the Chaldeans were derived, and that *Belus Neptuni Libiaque filius in Babyloniam colonos ex Aegypto traduxisset, & ex iis Sacerdotes quos Chaldeos Babylonii vocant, qui more Aegyptiorum astra observant, &c.*) These Egyptians naturally *Δεισιδαίμονες, μυσηριακοί*, superstitious in religion, curious in mysteries, transformed religion into all kinde of superstitions, and by trying conclusions and chymicall experiments vpon it, conceited the substance of it into vnexpected phancies, furthered by mimicall expressions, leading into, and leaving in mysticall mazes. The Grecians by nature *Νοήμονες εὐρετικοὶ καὶ φιλόνοιχοι*, intelligent, able to find out, and loving to contend, drew religion
into

Diodorus Siculus
Biblioth.
lib. 1.

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into disputes, and would beleue no more than they could finde out by search of reason, and apprehend by force of fanſie; and that they obſtinately maintained, by a wanton working wit, which they might with more eaſe doe, ſeeing their language was ſo happy for expreſſion. The Romans by nature inclined to dominion, fitted the frame of their religion to a Monarchicall forme vnder the Pontifices; yet they ſeemed to ſeek a Monopolie of all the Gods in the world: (for they receiued and worſhipped the Gods of all the nations they conquered.) Theſe nations framing religion to theſe ends, had a forme of government, vnder religious perſons, ſutable to further, contriue, and compaſſe by all meanes, their particular purpoſes, and therefore they gaue them power, of a moſt large extent, yea they were ruled by them; for the Chaldeans were originally Priests, and *Αρχιεπίσκοποι* *ἱερέων* *ἐβασίλευσαν* a priest, and a Prince were all one with them. So the Magi amongſt the Perſians, the Priests of *Apollo* at *Delphos* amongſt the Grecians did what they would. And the Romans were led by their Pontifices and Augures, but it was whither they would, namely to a Monarchy. Wee having not the ends of theſe nations in our religion, muſt not vie the ſame forme of Clergie. For I conceiue the aime of the beſt and wiſeſt with vs, is to preſerue the Church and Common-wealth together. Now that cannot be, where the ſtate of the Clergie governs, but where it is governed. Our ayme being ſuch, let vs conſider what forme will be beſt governed vnder this Common-wealth. There are but three diſtinct formes of Eccleſiaſticall government in Chriſtendome, as the Monarchicall, Ariſtocraticall, Democraticall; of theſe, the Ariſtocraticall is moſt conformable to the rule of this Realme. In proving of which aſſertion, I will not onely inſiſt vpon the prooſe of paſt and preſent experience, that it is ſo, but diſcourſe in reaſon

Cujacius de Origin. I. Civilis, §. 12.

Augustinus de Civit Dei, lib. 20. cap. 12.

Synesius epist. 126.

Pomponius de Orig. I. Civilis.

Ολιγαρχία τῆς
πολιτείας.
Polybius lib. 6.

why it should be so. And first in opposition to the other formes of Ecclesiasticall government: what they are likely to produce, woefull experience hath long since felt in the one, and what we may expect, vpon probable conjecture, from the other, is not to be desired by any that vnderstand, and loue the happinesse of this Civill State. For all their principles, fundamentall in their grounds, of augmentation in their growth, of conservation in their heighth, and of reparation in their decayes are most dangerous for this Monarchy, and the causes of their corruption would be so incorporated into the body and bowels of the Civill State, that if it fall not before them and into their hands, they would goe neere to pull it downe with them when they fall. Not to speake of their power, which they must haue, and the exercise of it, either in an ordinary and lawfull course, or by indulgence or vsurpation, and the manner of their proceedings in the execution of it, what instruments they vse in counsell and action, how much they trench vpon the power, vndermine the government, countermine the proceedings, countermand the edict, and confront a Monarchy, I leaue it to wise and active men to consider.

§. 3. First to speake of the Monarchicall, which is now the Papall government. How this Monarchicall forme hath heretofore agreed with this State, all know; and it is not likely that it should now so well accord with it, because the reasons of that little agreement then, the present particular interest, in which this State vsed that Monarchy, are ceased; for then wee ayimed to enlarge our dominion by the right of succession in France, by the right of conquest in Scotland and Ireland. But the causes of disagreement still remaine, and are in their part aggravated to an vtter opposition; so that as before it was dangerous, so now it is a desperate case to re-entertaine that forme of Clergie, which can and will rule vs, and must

must necessarily alter, and so worke the ruine of the present state. Vnder this forme this Kingdome was no Monarchie, but a Province, vnder a forreiner, an vsurper and a tyrant. This was our best condition when that Clergie ruled vs, though as favourable as they could, or did any Monarchy in Europe. The lawes and priuiledges of the land were continually broken and infringed by them, especially those lawes that did most immediatly vphold the Kings prerogatiue. Against them they continually promulgated particular edicts, for the decrees were too generall to be applyed to occasions, and therefore they added the decretals, so called, because they gaue wings to the decrees for quicker dispatch. And wee shall finde, that most of the *Decretall* epistles, which concerne Iurisdiction, were written to English Prelates. And (as I conceiue) some reason might be, because the lawes of this land are more contrary to the Canon Law, than the lawes of any other States in Christendome, being they are more ruled by the Civill Law, from which the Canon is derived, and so more causes might arise here amongst vs, either out of the contrariety of the Lawes, or out of the narrower extent of the Common Law, and also partly out of the ignorance of the proceedings of this State, which was then likely to be most, becaule intercourse and intelligence with Rome for that time was abridged; (for *Henry 2.* being then at variance with *Thomas Becket*, who was sheltered by the Pope *Alexander* the third, permitted not any Legate to reside in the kingdome; but as soone as *Vivian* was arrived, he was questioned, and that by the Bishops of Winchester and Ely, how hee durst land without the Kings speciall licence.) And partly they writ the oftner to English Bishops, because they suspected them, and justly, to be more partiall for their Prince, than the Prelates of any other kingdome, as appeares by their readinesse to examine this Legate, and also by an epistle

*Duarenus de
beneficijs Eccles.
Proxime.*

Lib. 4. tit. 17. cap. 7. qui filij legitimi. Sarisburiensis de nugis curial. lib. 7. cap. 24

Glanvill, lib. 7. cap. 15.

Ad Regem Anglia pertinet de possessionibus iudicare.

Iohannes de Parisijs contra Bonifacium octavum, cap. 12.

epistle *Decretall* of *Alexander* the third to the Bishop of *London*, who then was *Gilbert Foliot* (a man much commended by *Mathew Paris* and *Iohn Sarisburiensis*) in that epistle hee curries favour with him in a cause which hee knew was of Ecclesiasticall cognizance, and was so judged here in the Kings court, (as appeares out of *Glanvill* then Lord chiefe Iustice) I think in the very particular case. But he feared, seeing the Bishop could doe so much with the King, and would doe so much for his King, least hee should finde some way to entitle it to the Crowne: and hee had good reason to feare, since the Bishop had so often in the Kings behalfe opposed *Thomas Becket* and him. These may bee some reasons why the Popes sent so many epistles into *England*, and I am the more confirmed in them, because I finde they were for the greatest part written by the most Pragmaticall Popes, who busied and bestirred themselves most in setting up orders, and new fresh Fryes, and fraternities of Fryers; and in pulling downe the powers both of our Kings and Bishops: to wit, from those seaven Popes (who were the thirds; and I thinke the worst of their names, I am sure of their predecessors.) As for the most part they were written from *Alex. 3. Lucius tertius, Urbanus tertius, Clemens tertius, Cælestinus tertius, Innocens tertius*, and *Honorius tertius*; these men did and undid very much, because they were active and lived long. If then this forme of Clergie was thus prejudiciall to our state before it was opposed and incensed by the statute of *Proviso* and *Premunire*, and cast off by the Kings just re-assuming their power, (which shewes that all their right was nothing but our soveraignes wrong;) surely now wee are not to expect so much favour from them: and therefore as the State then thought it necessarie and right to casheere it, and brought their purpose fully to passe; so it is now more necessary and just to keepe it out, since it is infinitely

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nitely increased in tyranny, since that unhappy, unadvised, ill advised conventicle at *Trent*.

§. 4. Those nations shall have the best use of that forme, who propound a civill state as large as their Ecclesiasticall; and to whom he hath first sought too for assistance: and withall are able to overrule it. For after *Iustinianus* the last of the true *Roman* Emperours, and *Gregory* the last of the good Popes, that See claue to *Phocas*; who named the Pope Vniversall Bishop, that hee might proclaime him Catholique Emperour. But when in the next Centurie the Easterne Emperours were infected with *Saracens* warre, began to pull downe images as some cause of the warres, which the Pope endeavoured to set up againe: then by the second Councell of *Nice*, whether because they did him wrong in disobedience, or rather because they could doe him no good; the Greeke Pope *Zachary* fell off to the *French* before the next Centurie. And then *Pipin* used him to confirme, not to conferre his new atchived Kingdome; for in those dayes they gave no such power, neither did Pope *Zachary* claime it: for hee deposed not *Childericke*, but consented to the deposing, which was by the Peeres of *France*; neither did he set up *Pipin* in his roome: but they that deposed the other onely sent to *Rome* to have *Zacharies* advise in it, because it might passe more plausibly in the world by the consent of so grave an Oracle: as it hath alway beene good wisdom to winde in the conscience of one who is esteemed an upright Iudge, for the countenance of an unusuall cause humorously undertaken by the first Author; especially there being then a faction amongst the Bishops of *France*: so that this inquirie of his judgement in point of fact did non submit to any claime of right. And *Gotefridus Viterbrensis* affirmes, and *Baronius* confesses, *Francos non Zacharia paruisse decreto, sed acquievissse consilio*: and there is great difference betwixt an absolute injunction

*Bulla quasi
Bona ut iurista.*

*Baronius An-
nal. Anno 750.*

*Baronius An-
nal. Anno 751.*

injunction, and a politique advise, which is onely an answer out of discretion and left to discretion, implies no obligation of necessitie. But this is without question, *Pipin* being ambitious of the Kingdome, and desirous to cover and colour it with religious ends, used the Pope to countenance and compasse his designe; who would not withstand him, being ingaged to him for protection and by bounty, or which is likelier, hee durst not, being too much in his power. But howsoever it was, he clave fast unto the *French* for that Century: especially to *Charles* the great, the repairer of the Westerne Empire; from whom the *Caroline* succession continued till *Otho* the third. But then the *French* Kings being distracted by warres at home, could no more assist them: *Gregory* the fift an *Almaine* transferred it to the *Almaines*, choise those seaven Electors, but they agreed not well together: after the *Almaine* Pope was dead and *Italians* succeeded, they presently began to quarrell with the Emperour, and to send challenges of right into *Italy*; knowing that the Emperour was not able to doe much for them in giving them as the *French* had done, and perceiving hee was more unable to hold from them that which they would have: so that the Emperours were continually imbroiled by them, being not able to rule them, decreasing as fast as they rose. Then the opposition betwixt many particular Popes and Emperours, as betwixt *Gregory* the seaventh and *Henry* the fourth, and *Alexander* the third with *Fredericke Barbarossa*, was very strong. But after it grew to such a height that they were settled into factions of separations, as the Ecclesiastiques and Imperialists, especially in *Italy*; which the *Italians* quickly perceiving, because earnestly desiring the Emperours power over them to be looser, began to make use of the Papall present opposition to procure their full liberty: and therefore these factions were most strong there. Yet that grand faction distinguished

Augustinus de
Ancona de po-
rest. Papa:
quaest. 37. Art. 5.

Segebertus
chron. passim.

Nabrigensis
hist. Anglicana
lib. 4. cap. 13.

Abbas Vnsper-
gensis chron.
passim.

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distinguished by many formalities, was principally maintained under the names of the *Guelfs* and *Gibellins*, which swallowed up all the private and pettie familie factions of *Italie*. As the *Vrsini* in *Rome* were *Guelfes*, the *Collo-* Math: Paris,
hist. Anglicana
Anno 1215.
nensi *Gibellins*, the *Vberti* in *Florence* were *Gibellins*, the *Bondelmonti* *Guelfes*, and so it was in *Naples*, *Venice*, *Mil-*
laine: which strife continued hot till *Boniface* the eight, who perceiving how much his predecessors had gained upon the Emperour, and saw but little more for him to get; began to practise the like domineering humour upon the other Potentates of Christendome, sending his letters of claime to the Kings of *France*, *England*, *Scotland*, *Denmarke*, *Poland*, *Hungarie*. But being opposed by *Philipe Beau* King of *France*, hee did flie backe to the Emperour for succour, who then was *Albertus*, the first Emperour of the house of *Austria* (for though his father was Emperour, yet hee was not of the house of *Austria*, neither of the old Marquesses nor late Dukes, but Earle of *Hansburg*, who had conquered the Dukedome of *Austria* for his sonne.) This *Boniface* the *Spaniard* first began the faction betwixt the Kingdome of *France* and the house of *Austria*, by giving the Kingdome of *France* to *Albertus*. These two better agreed then any, because the Pope had taken off the Emperour from seeking his owne right in *Italie*, by imploying him as his champion to enlarge his dominion in other Kingdomes: and partly because the Emperour had good hope to continue the Empire in his familie, as it hath neere foure hundred yeares. From which time the Emperours and Popes disagreements were not so frequent, but onely when some *French* favourers were Popes, and they sate at *Avinion*, as *Clement* the fifth with *Henry* the seaventh, and during the times of the Councils of *Constance* and *Basill*. But by reason of the schismes in the Roman See, they did one another neither much good nor harme, vntill the time

*Anonymus
Hisp. in vita
Alex.*

*Baronius An-
nal. An. 637.*

*Philip. Comi-
naus, lib. 8.*

*Thuanus hist.
lib. 4.*

of *Alexander* the sixth, a Spaniard, who was exactly ambitious, a great lover of his countrie, and one that did much for it. For hee joyned with *Ferdinand* the first Catholick King, helping him to subdue Spaine, and therefore first brought in the Inquisition *Contra los Indios y mores, que le avian tornado Christianos*, which *Caranza* Arch-bishop of *Toledo*, saith *Ferdinand*, conceived himselfe bound in conscience to vse, by vertue of an oath taken with an imprecation by one of his predecessours in the fourth Councell of *Toledo*, which *Baronius* so much commends. This Pope also bestowed vpon him the then discovered Indies, with many other favours, and for his sake, and in opposition to the French, hee was as fast a friend to the House of *Austria*, as his deepe dissimulation would suffer him; and the rather, because they had lately matched with the House of *Burgundie*, which much weakned the French force, and strengthened their factions. But then most when *Philip*, the heire of the House of *Austria* and *Burgundie*, incorporated himselfe with Spaine. So that I will conclude these things considered, that this forme is onely safe and convenient for those kingdomes that propose conquests, and can rule it as the protectors of it.

§. 5. So then seeing this Clergie is not for vs, I will consider of the other, which for distinct proceeding, we may call *Democraticall*. When the three Prime Potentates of Christendome, were *Charles* the fifth, *Henry* the eighth, *Francis* the first, such as deserved and desired to haue all the soveraigne power that could of right belong vnto them, and yet were contrariwise vsurped vpon, and deprived of all their eminent supremacie, in those things that most concerned them; & perceiving (some beginning to question the Pope) a course of relieving themselues, they began to vrge a Councell for reformation, not onely in doctrine and manners, but also in point of Ecclesiastical

sticall government. But it was so long vrged by them, to no purpose, that *Henry* the eighth advisedly wrote to the other; That seeing the Pope had so long put it off, and now intended to hold it within his owne territories, it were the best course for every one, to reforme his owne Kingdome, and he did so with the advise, consent, and desire of the Church and State representatiue. No sooner was a reformation in any degree settled, but presently it was excepted against by some that favoured the Church of *Geneva*, as not fully reformed, because not agreeing with their new neat platforme; & that was vrged vpo vs, as the only Apostolical government of the Church. But I marvell how such an exact government should be so suddenly framed, or else which is more strange, that they could so conceale their happy invention; as that *Francis* the first, a King of France, that leached into his government as much as any, should not know of it. For I am very much deceived, if hee had not beene much mistaken, knowing of this project, to desire the Councell might be held at *Geneva*, being it was Diametrically opposite to the Romane. But our State had no reason to receiue it. For though it was necessary, not onely in reason of State, but also out of conscience, that (after we perceived the indisposition of the Romane Clergie to reforme themselves, (which they seem to hold impossible.) For though every Cardinall takes an oath in the vacancie, yet it cannot binde him when he is Pope; wee should then performe our duty, especially seeing it stood with the publick good.) Yet neither of these considerations did engage vs to accept of such a forme of Clergie, as seemed to runne a cleane contrary course, seeing we propounded not an innovation, but a reformatioa; that being as dangerous, as this was necessary, it could not here be entertained without an vniversall innovation. Now all stirring changes are dangerous, especially when the body of the

*Histor. Concl.
Trid. l. 2.*

*Histor. Concl.
Trid. l. 2.*

common-wealth is full of diseased, discontented humours. Because all alteration sets the humours a working, and one humour being a-foote, stirs vp all the rest, either alluring by sympathie, or provoking by antipathy; and when they are once a-foote, it is to be feared, that they will not onely disburthen the body of malignant oppressing crudities, but weaken it in the most principall parts, causing it to receiue a disposition to the like distemper, vpon every small distaste. But it is most dangerous to innovate in that part of a common-wealth, that is most essentially actiue, and hath beene lately recovered, especially if the matter proposed doe minister any cause of relapse. Both which seem too true in this new discipline, which gaue an occasion to the Clergie to revolt in the denying the supremacie, which they lately acknowledged. And being a forraine French devise, might seeme to come within the compasse of a *pramunire* for intrusion. as well as that of the Church of Rome for vsurpation. But this was only propounded, not brought in, and that by men who were by some beleeeved to be faithfull to our State. And it may be, they had no dangerous aime in it, yet it would haue beene very dangerous for our kingdome, since it did necessarily induce an alteration in the profession and practise of the lawes, which by reason of their long vse, are as it were naturalized, into the manners and disposition of our nation. Τὸ ἀρχαῖον ἔργον πρὸς τὴν παλαιοτάτην φύσιν. It must necessarily haue conferred ruines vpon our schooles of learning and hospitals of charity, razed the foundations of our Churches, confounded diuisions of parishes, changed the right and custome of paying tythes, with many such miserable inconueniences, which were so in the Apostles times of miseries, in persecution. So that the State then would not venture to trie conclusions vpon it selfe, by this new receipt, *but chose rather to feeble the supposed paine, than to take*

Arist. Rhetor.
l. 2. cap: 11.

take the pill: and yet it hath subsisted, though not in that heighth of health, which that forme of government promised; yet in such a good competent continuance of reasonable well, that the present state also had rather indure the worst of the disease, than make the best vse of the remedie. And if it must haue made such a change in the entrance, what would it haue done in the continuance? how would it haue agreed with this Monarchie, that must haue entred with such oppositions? so that I neede not to say much to discard it, for it hath enough in it at the first sight to keepe it out. And I confesse, that if I would, I cannot say much of it with any confident certainty, because indeed I doe not know, neither doe I thinke that any of them doe, or at least ever haue set downe, in positive and plaine termes, the whole frame and face of this platforme, as they would haue it received in this Kingdome. But as much as I conceiue of it, and at the best and purest, it is a mixt Democraticall discipline, and it is not likely, that a dissolute Democracie should long agree with this Monarchie. It is not my intent here to discourse of the nature of a Democracie, that I should shew the manifold consequent, coincident inconveniences, that doe naturally flow in with it, and follow it (notwithstanding that *Machivell* in many of his discourses vpon *Livie*, doth preferre a Democracie before any other forme, but rather wittily, out of a Paradoxicall contradicting humour, than wisely, out of the weight and worth of sincere, sage, and serious arguments. And *Plato* saith thus much for it, in his *Idea* of a Common-wealth, *admixta inter iniquas formas optima, inter legitimas deterrima*. For if it begin to degenerate into an Ochlocratie, (as I cannot conceiue it possible, but it must, considering that liberty is the end and excellencie of it) then it turnes to a most head-strong, intollerable tyrannie. For I am not of their opinion, that hold it a contradiction, that where a Democracy

*Clayman. de
Aic. resp. l. 4.*

*plato de repub.
lib. 5.*

Plato de leg.
lib. 4.

Polybius hist.
lib. 6.

moeracy prevayles, there can be a tyranny. For the *Ephori* of Sparta, were as the Tribunes of the people of Rome, chosen by the people, and out of the common people, and the conservators of their liberty. Yet I thinke there are but few that discourse of these *Ephori*, but they conclude, and condemne their government of tyranny. They cast *Pausanias* into prison, and *Thucidides* saith, that they vsurped that power over, and against their Kings, for they put *Agis* junior to death, as *Plato*, Κατὰ Εφῶρος πρῶτον δὲ Λακεδαιμονίων πολιτεία, and they were set vp to restrain their Kings. It is a hard matter to keepe that liberty within its limits, in any common-wealth, where it hath the supreme government, and therefore with much difficulty will it submit to be governed by a free Monarchy, especially a Democracie of that new nature, which makes the same persons civill subjects, and ecclesiasticall superiours, those lay Elders that are neither Ministers nor Magistrates, and yet must be governours in the Church, whose jurisdiction doth destroy the nature of a Monarchie. For all publick government in the Church, derived from Christ, the fulnesse of it, is either Prophetically, Sacerdottally, or Regally; and they assume not any of these, but the Regall, which is given in charge to supreme Christian Magistrates in a Monarchie; and therefore, if they deriue not this power from him, they establish a regiment against him. So that if his power, doth not include theirs, they exclude his; and he having no supereminent power over them, as they impeach his right, so they will enlarge their owne liberty, till it be dissolved into a loose licentious libertinisme: ἡ ἀπειρώδης χειρονομία, (as *Polybius* well expressees it.) And if they did not thus, it were the greater vertue, seeing they must haue such power limited by lawes left to discretion. And they would finde it a hard peece of patience, to abstaine and containe themselves within such bounds of obedience, as this State
neces-

necessarily requires. Can men that professe themselves
 popular passe plausible and please the vulgar if they
 doe not to their vtmost vphold them in their highest
 insolencies? *Tullie* found this impossible when as hee *Tullius in Orat.*
 withstood the people in *Lege Agraria*, for they cast him *2. cont. Leges*
 off, and clave to *Rullus*, who would be *popularis* though it *Agraria.*
 were but in *populacione*: and as it cannot stand with the
 power of our government, so it withstands the honour
 of our governour, debasing the majestie of a Monarchie
 into a popular paritie, without respect of His most sacred
 person. In this it is truly Democritall; for as it was re-
 ceived for libertie, so it must bee vpheld by equality:
παρρησία cannot be fully free without *ισιγορία*, and I cannot *Polybius Hist.*
 then conceiue how any could apprehend it as a forme *lib. 6.*
 likely to agree with state; so that this government at the
 best would bee like the spleene in the body, which is the
 subject of the dregs and settlings of the humours, as a
 Democracie is *la feccia della plebe*, and as the spleene *Guiccardino,*
 being not able to moue it selfe is not troublesome, so long *Hist. lib. 2.*
 as it is not pressed vpon by the heart, but permitted full
 and equall liberty, nor disturbed by a *Flatus hypocondria-*
cus *ὑποχόνδριον δὲ χεῖρ ἄπονον καὶ θυμὸν ἀναιδέα*, but once mooved
φλεγμαῖνον ὃ ἡ ἀνομιὰ δὲ καὶ ἡ ἀνομιὰ, *ἡ δὲ ἀνομιὰ* affects the *Hippocrates pra-*
 head and heart with turbulent distempers; so in a Demo- *notion: cap. 11.*
 cracie as long as they haue all at their loose list, and are
 not compelled to keepe within compasse, but apprehend
 themselves equall to the highest in all respects, and are
 not mooved by some sedicious spirit, they are quiet e-
 nough; *Nam multitudo, sicut mare, per se immobilis est*, *Livius hist. l. 5.*
 but if once they perceiue that any goe about to oppresse *Psalm 65.*
 or crosse them in their false and fugitive liberty (as they *He stilleth the*
 are very suspicious vpon the least cause) they presently *noyse of the*
 are ready, but *tentare magis quam tueri libertatem*: and if *waues, and the*
 any one dare but begin to blow a Trumpet of sedition, (as *tumult of his*
 they doe not easily) *statim ferox erit si non ad bellandum*, *Idem ibidem,*
 they doe not easily) *statim ferox erit si non ad bellandum*, *Idem ibidem,*

saltem ad rebellandum. I doe confesse that this forme of government may bee of good use in some states at some times, as in a popular state where these Lay Elders may be both Church and Citie Burgeses; as the Democraticall *Helvetians* approved it: so also as for the enlarging of a Monarchie, the Monarchicall is best; so for the settling of a Monarchie, that Democreticall may be safest, and so may bee the best government when a state is not settled but newly erected: for then it is not safe to use severitie as when our state was not fully settled. *Martin Mar-Pre* late dared to vent his discontented humours in salt rumours, as men in rheumes: *In novo & precario imperio non statim jugum rigidum cervici imponendum*, but it is good taming them by degrees, for then a Magistrate hath little power to command, much lesse to restraine; & therefore it hath bin found the best course to let the take their course: for *Mos est vulgo, mutabili subito, & tam prono in misericordiam, quam immodicum sevitia fuerat*, and so by indulgence finde *lascivire magis plebem quam savire*. And I am perswaded that this discipline was onely chosen for that time when the *Apostles* were under persecution, and there were no Christian Magistrates to repaire to for justice: then they appointed some to judge betwixt brother and brother. But it doth not appeare that they were Ecclesiasticall Iudges, certainly no such lay Elders in the *Apostles* times as the Separatists now plead for, but rather civill arbiters to make agreement betwixt them in civill controversies, (as may appeare out of the place) though the author of the History *Concil. Tridentini* make that a ground for Episcopall jurisdiction. For the *Apostles* had no reason to delegate the cognizance of spirituall causes, becaule in those dayes they were so few, and needed no prooffe to them; becaule they had the gift of discerning of spirits, and of knowing of secrets, having the gift of prophesying. And I doe not belecue that it can bee proved that they

Machiavellus, l. 1. cap. 5.

Curtius Histor. lib. 5.

Tacitus Histor. lib. 1.

Livius lib. 11. Histor.

1 Cor. 6. 4. 5. Histor. Con. Trid. lib. 3.

they gaue commission to any to receiue accusations, (which is much lesse then to giue iudiciall censures and decisions) to any but to the Bishop of *Ephesus*; but I intend not to enter into controversies, neither need I, seeing so much hath beene already written in that point to good purpose by many most reverend Fathers of our Church. But to returne to my intended discourse; this state of the soveraigntie of these seniors I grant to be of some use in free Cities in time of tumult; and so I doe belecue M^r *Calvin* intended it, yeelding to a popular partie, and not as an vniuersall perpetuall government for all truely reformed Churches. For though such a wise respected man as hee was, might during his time preferue it in the same correspondent conformitie to his proposed patterne, (as *Polybius* saith) the *Thebane* Democracie ἐκ ἡ τῆς πολιτείας σύστασις, ἀλλὰ ἡ τῶν πρεσβύτων ἀρετὴ; it stood not by the good temper of their pollicie, but by the vertue of their governours *polyb. lib. 2.* *Επαμεινονδός, καὶ πελοπίδης*: so might it bee said of the *Geneva* Church government, that though for the transgression of it many were the rulers of it, being a Democracie: yet by a man of understanding and knowledge, the state thereof was prolonged; for hee could doe much to appease seditions, as *Franciscus* Bishop of *Volterra* sooner settled a tumult in *Florence* by his graue presence, then the Magistrates could by the weight of their authority. It is plaine then out of this that hath beene spoken, that this government by popular Presbyterie is not for this state. *pro. 28.* *Nil magis a quo prodest quam curari a quo volunt.* *Seneca Cont. 5.* *Machiavellus, lib. 1. cap. 514.*

§ 6 Neither of these being convenient, and there is but another, and it hath alwayes beene the government in this state; it must necessarily follow without any more prooffe, that this is most agreeable with the Civill. Those that are no well willers to our state haue stricke at our Church gouernment, with which there is such a happie hartie vnitie, as dare bid the world doe as shee would bee

done to (as that absolute Statse-man the Earle of *Salisbury* replied.) And it is no marvell, since it is not onely the primitiue ancient government of the Church in generall; but the onely forme also that euer was received in this state, according to the ancient lawes of this Iland, though it seeme to be brought in under *Henrie* the eight, when it was onely reformed from the euils, and restored to the former state: for our Clergie was never of right subject to the Pope, neither as he was Patriarch to the West, nor in his province. And this Aristocraticall forme hath most happy qualifications that dispose it to the peace, profit, honour, & safety of this state: I could now wish with *Tully* when hee was to write against *Democraticall Agrarian* lawes, *Vtinam Theophrastum* μετὰ φιλοπρωίας, &c. *Vbi multa scribuntur* Ἀεισχεγεμνῶς. After this Kingdome with many others had long laboured under a lingring consumption, being continually sucked, and in a manner exhausted by the continuall supplying of the Popes Exchequer, which drew away the vitall spirits, weakned the sinewes of warre; causing extensions and convulsions: and farther also in respect of domestique peace, it had not a just proportion of power to exercise its onely civill and lawfull authority: insomuch that many who should have knowne what in possibilitie of state might bee done for a recovery of a temporalitie, distempered and distressed by the malignant humerous power of an usurped spiritualitie, like a feaver in the spirits caused by obstruction; All those men gaue it over for desperate, some conceiving the disease incurable in its owne nature, because, that *non obstante* the helpe of so many strong statutes and purging provisoes, the distemper was as violent, and more virulent then before; & they saw no safe and certaine course of preventing physick, for it was so far spent, as that it seemed to haue passed the period of curing: but as when men are brought to a desperate point they will trie conclusions, and they that

Ad Atticum, l.
2. epist. 3.

πνευματώδης.
Hippocrat. lap.
5. prog.

that drive them to it doe often repent it; so the Pope putting ~~and passing~~ our state upon desperate hazards, forced it to trie its strength, which is soone found; necessitie driving, and opportunitie drawing: *Acerrima virtus est, quam ultima necessitas extundit*: and so it cast such an unreasonable unruly rider, who thought, and so did all christendome, that hee had sitten closer and faster upon our skirts, and would not belecue that it was possible for a Parliamentary power representing the state, euer to haue beene able to dissolue the great Abbies, though they durst fully resolue it; untill they saw them begin with the little ones; then they had reason to grant it possible: *ὅθεν γὰρ ἀγχαται γίνεσθαι τῶν ἀδυνάτων*. Yea they found it fully finished, and that on such a sudden, that as it wrought admiration in the beholders, so it procured safety to the actors. For in actions of that nature, haste onely makes good speed. That the event of this action was good, is proved by the deliverance of the state. But for the action in it selfe considered, as I doe not commend it, so I will not condemne it, because I am not able to sift and search into the circumstances of it; but I will onely say thus much of it, That actions that ayme at, and make great alteration, though to the best, doe seldome keepe a just mediocrity, especially in respect of that part of the common-wealth, which is the subject of the alterations: as a strong, stirring Chymicall spirit-purge doth in a naturall body, that stirres vp more than should be moved, and purges out good, as well as ill humours. But no sooner was our State thus delivered from vnder the tyrannie of the Ecclesiasticall Monarchy, but it as soone pitched vpon the Aristocraticall government, as suitable and fitting best with the weale-publick. And as all the Christian world did then in sincere judgement of State *rebus sic stantibus* approue their choyce, so we haue ever since found the happy effects of it, in the safety, honour, and treasure of the

Senec. de Clem.
men. l. 1.

Arist. Rhetor.
lib. 2. c. 20.

Histor. Concl.
Trid. lib. 2.

Democr:

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(Sedicon.)

Lucius Florus
lib. 1. cap. 22.

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State. Consider it first, how it wrought little or no alteration in the receiving, being according to the lawes, taken by their owne choyce, restrayned with the limitations of the Civill State. For all the turmoyle and tossing tumult, was onely in casting out the other forme, as a privation, before the induction of a new forme in naturall bodies. It was received without force, as most naturall to the Civill State, and no other could haue beene brought in with such certaine good security of the state: for the Monarchicall that time could not be received, but either vpon their repentance of what they had done, and by procuring of a pardon from the Pope, (as it was in Queene Maries dayes: and doe but consider, how evill that was for the State) or else by helpe of forraine force joyning with domestick rebellion, as was often attempted. But this was not any thing safe for the kingdome, as is already proved. And for the Democraticall discipline, there was great and certaine danger in receiving of that, for it could not possibly be conceived to be received, but with a schismaticall sedition, since it was approved but by a faction. Now doe but consider, how dangerous seditions are in an ancient kingdome; if it were now a settling, happily the vigour of youth would beare it out, as one maine reason (as I conceiue) why the Roman Monarchy was not ruined by those foure first grand seditions, was because it was but *secunda etas*, & *quasi* *adolescentia*: But when a State is growing old, seditions are desperate courtes to procure changes, though it be for the best. For though the events of them be but doubtfull, yet the deciding-place is certaine of losse. But for this present forme, as it re-entred without a State-earthquake, without any shaking of the ground of the Civill government, so it hath ever continued peaceable, and a pacifier of growing differences, being the middle State of three, carrying it selfe as a moderating mediator betwixt

twixt the King and the Subjects. And all this good, and much more proceeds from the temper of the forme of government. For it is the onely forme fit to be vnder this Monarchy, because it will onely be easily ruled and ordered by the State, whenas both the other will rule wher they are entertained, although after a diuers manner; one having dominion over the Civill, the other without it. But this is vnder the Civill, in relation to the head; and in it, in relation to the body. And as it is easily ruled, so it will not easily be disordered, as the other will, though they should submit to be ruled for a time, till they be able to resist. For ambition is so perniciously provident, that it will be something able to resist the power of its opposite, to get from vnder it, before it trie to goe about it. First, taking care not to be oppressed, before it endeavour to oppresse; for all the branches of rebellion, are rooted and hid in the depths of dissembled disobedience. But this is not so inclined; for if any forme of policie degenerate, it must be either into a Tyranny, an Oligarchy, or a dissolute Ochlocraty. Now an Aristocracie cannot be immediately dissolved, either into a tyranny, or a tumultuous popularity. And it is not easie to conceiue, how it should by any meanes, by the course of State corruption, ever degenerate into a head-strong popularity of it owne accord, without externall force. And as little reason there is, why this should advance it selfe to a tyranny, by turning the Church into a court, and religion into a vassall to ambition; for it must be reduced and restrained into an Oligarchie: and there is no great reason in this point, to feare the Clergie in this kingdome, all things considered. It is true (as all Historians and Politicks obserue) that an Aristocracie is subject and prone to be corrupted into an Oligarchie: But doe but obserue the end of an Oligarchie, and you will finde, that an Aristocracie can haue no such ayme; for their end is, to grow rich,

Earle of Salisbury his answer to scandalous papers.

Arist. Rhet.
lib. 1. c. 8.

Sen. Suasor. 1.

Augustinus
contra Donat.
lib. 4. cap. 1.

rich, as the States of Venice and the Belgick provinces, and their counsels driue at that end, ἐν ὀλιγαρχία βεβόημενοι πλεῖστον; and according to this end, and this counsell to it, he that will prevaile in perswading with them, must deliberate, *in libera civitate, non ut apud reges, quæ delectant, sed quæ profunt suadenda sunt.* But our Ecclesiasticall Aristocracie is not to be so perswaded, having no such counsels, because not the same end; only they may be rich, if they did desire it, because being poore, they are a fit subject of wealth. The poverty of this Clergie hath charmed it against actiue ambition, so that one of the *Optimates* doe not looke higher than his peeres, set with him in equall power and honour, in relation to their severall Diocesess, though the power of jurisdiction be in some cases larger, in the provinciall Prelate, *Nemo nostrum Episcopum se Episcoporum esse dicit, neque tyrannico terrore ad obsequendi necessitatem, collegas suas adigit:* so that *per accidens*, the impoverishing of the Clergie in Henry the eight, when it seemed in the eye of some too rich for the Civill State, did this good, to preferue them from an Oligarchie; even as to take so much blood away in a plurisie, as to bring a man to a deepe consumption, is a probable preservatiue against dying of a burning feaver. So that alteration of this State is not much to be feared, in respect they haue no reason to alter it; and withall it is not easily altered, if they had this or any other ground to doe it. For an Aristocracie in it selfe considered, is a government of a most constant, continuing constitution, especially, when it is mixed and tempered with a Monarchy. For the reason of its constancie is not onely the slownesse of the motion, either to augmentation or diminution, like a great engine moving with many joynts, in which poynt a Monarch will much advantage in advancing & setting faster forward, if not their deliberations, yet their determinations; and with ease and speed

speed stay all their errors and declinings, while they are but in the breedings, beginnings, and begettings ; but then also the force of their factions (which breaking out, are the common ruine of Aristocracies) will be abated, as it may be seene in the Spartane and Venetian States, opposed to the Athenian and Florentine. For these had an Aristocracie without a Monarchie, and were continually tossed with seditions and factions. As that long lasting faction of the *Guelfes* and *Gibelines*, which could never be fully taken away, but by the ruine of one partie, when as the Venetians their neighbours (whose Duke was then not a *Simulachrum imperij*) kept the faction out of their common-wealth, though they did declare themselves sometimes on one side, and sometimes on another, lest they should haue beene hated of all, as negligent neutrals; but they did not nourish the faction amongst themselves, but maintained it in other Countries, as they would doe warres. But the State of *Millaine* could never be free from it, vntill it was extinguished by *Francisco Sforza*, *Paulus Iovius* *hist. lib. 6.* (who was a free Prince, though an vsurper) so that the mixture of a Monarchy, and the predominancie in an Aristocraticall State, doth not onely make it actiuelly more able to offence, but more passiuely powerfully defensiu, not onely by preventing preservations from domestick dangers, but also by recovering it out of them.

- And our present State Ecclesiasticall is thus mixed. (for I doe not vrge a strict Aristocracie ; *Αἰσὼν ἔτι πάντα Αἰσώματα* *κῶς ποιεῖν* (as Aristotle) and therefore hath the best meanes of conservation in respect of the former. And it hath one more prevalent preservative in the Optimates themselves, which is, that they are strongly disposed to this kinde of government, not onely by being of quiet contemplatiue natures, but also Academicall Colledge government, which doth first possesse them and fully please them, is Aristocraticall, having the proper ayme of that forme

Arist. Rhet. lib.
1. cap. 28.

Thucydides l. 3.

Machivellus
lib 3. c. 10.

Arist. Rhet.
lib. 1. cap. 11.

Bodinus de
repub. l. 5. c. 1.

forme of government; τὸ τέλος Αἰσχροκρατίας πρὸς παιδείαν, discipline according to law, is the end of that forme of government. And they then that ayme at that, are most likely to preferue it, by persevering in their intentions; when as others that will devise new platformes, and platforme discipline, and will seeme wiser than the lawes, doe suddenly subvert or disturbe this most safe and settled forme of government. Witnesse the Athenians and the Florentines, who being of a stirring over-actiue temper, and alwayes doing, though it were to the vndoing of things well done, changed this forme of State seven times, which corrupting transmutations, I hope *Machivell* their Countryman doth not call and commend vnder the termes of reformation, and reduction to their primatiue principles, without he will grant their prime originall order, to be rayfed out of confounded confusions. When as the Venetians, who haue beene calme and cold, and constant in provident proceedings, haue kept to the same forme without any fundamentall alterations, and that because they will be ruled by lawes; whereas the Florentine is so overweeningly wise, that he thinks he should Emperour-like rule and make lawes ἀρχικὸν τὸ ποιεῖν. So that *Bodinus* judgement of them, and the Neopolitans is true; and approues him to be a most rationall statist; *Dignos se esse imperio singuli arbitrentur ad populare imperium, magis quam Optimatum inclinati.* But suppose this government should be disordered, it is easiely reformed againe, which is a point of very great safety, it may be done without any stirrs of tumults, and speedily, for it hath not that power to resist authority, which the other two formes haue; and that because it vseth not the meanes they doe to procure it. For the Monarchy of the Church of Rome, and the Democraticall discipline, stirre vp the vulgar, and rely and rest vpon them for assistance, and defence, and therefore they endeavour to wooe and winne

win their hearts, that they may vse their hands and purses : yet they doe it diuers wayes. As the Romanists, amongst many other wayes, they get into their hearts at their eares by auricular confessions, they hold them by their eares, and by their eyes ; they fascinate their fond phantasies with superstitious ceremonies, exquisitely intricate, full of mysticall and magicall mazes, broached by fancie, continued and countenanced by tables, consisting in the massie materiality of bodily exercise, as may be seene in the austerity and State of an Austrian penance, or in a Pontificall procession, where all is done with such concealed secrecie and silence, that nothing is prostituted to be polluted by the vnsanctified view of the vulgar. Thus by feare mixed with delight in superstition, they can leade them as they list, and engage them in their quarrels, and bequeath to them their dangers they haue pulled vpon themselves. The Disciplinarians are not onely endeered to them, for the forme and frame of their government, and for their novelty, but they make vse of superstition also to hold them, and to haue them at their beck; but in a course cleane contrary to the other, for they vndo all the other haue done, in point of ceremony, without consideration, whether it be good or bad. and that out of a superstitious rage, as the other did out of feare : (for superstition is grounded vpon either of those passions.) And as their feare was mixed with pleasure in the end, so theirs is mixed with profit, when in the destroying of superstition they enrich themselves with the spoiles, and saue charges in ornaments. Which profanesse of theirs, is in some respects worse than their superstition, and it many times ends in Atheisme. For though they were consecrated after a false manner, yet they were dedicated and devoted to the true God, and should not be profaned to common vses, but sanctified by a new and true consecration, as well as the Churches wherein they were. Thus

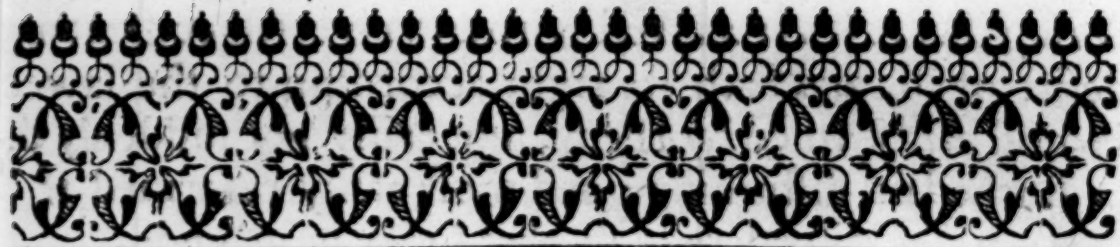
those formes of Church-government haue power to withstand the reforming rod of authority. But our present State vseth no such meanes to stand out a rebellion, because if it offend, it rather proceeds out of weaknesse than wickednesse, from scholasticall indiscretions, that deserue rather pittie than punishment. For it is not likely, that they would disturbe the State, who shall certainly lose that little they haue by it, rather than get more. I find, that amongst those Prelates that haue troubled and turmoyled kingdomes, *Peters* pretended successours haue only gained, by fishing in such troubled waters. And as they can haue no end worth their stirring, so their naturall inclination is not so perniciously pragmaticall, they are farre from the tricks of tumbling projecters, and all actions proceed either from our generall end, or particular inclination; and this inclination is fortified and confirmed, if not formed and framed by their studies, which haue a great influence into the disposition. I haue not in this discourse, entred much into the commendation of an Aristocracie in generall, preferring it before a Monarchie, partly because I feare, lest some should serue me as *Castellanus*, a French Philolophy reader (who, as I conceiue, was *Ramus* his Tutor) served his antagonist *Bigotius*. For when *Francis* the first was desired by some of his Nobles, to reade *Bigotius* his Disputations, *Castellanus* told his Majestie, he was an *Aristotelian*, and *Aristotle* preferred an Aristocracie before a Monarchie, & so tooke off the Kings affection from him. But he might be so excused, because I doe not beleeue it was *Aristotles* judgement, but his policie, to dissuade all others from affecting it, that his Master *Alexander* might effect it. But I did purposely forbear it, because it was not my proposition, that an Aristocracie is simply a more convenient forme of State than a Monarchie; but that this Aristocracie is more convenient for this State at this time, considering

Thuanus, hist.
lib. 6.

dering that it was received with an vniversall consent and
desire of all, and hath its right according to the lawes;
is most easily ruled by them, not easily nor suddenly di-
sturbed or disturbing; and most easily reformed if
it bee disordered: so that I may now vnde-
niably conclude, that the present
state Ecclesiasticall is most
convenient and best a-
greeing with the
Civill.

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*A DIGRESSION DISCVSSING
Some ordinary exceptions against
Ecclesiasticall Officers.*

THough none bee more loath and fearefull to come within the lists of controversies; yet seeing all that I haue already positiuely discoursed, is not onely controverted but also contradicted by these exceptions; I resolved to dissolue and dispell them, least they should by a darke reflexion cloud my cleare proceeding. And I am not a little confidenced in my purpose, when I consider whose cause it is that I vndertake, even the most able advocates of the Church, such powerfull pleaders as are infallibly sufficient to defend both their cause and mee their poore defendant; for they are absolutely able (if their conscience would but dispence with their vnderstanding) to make a bad cause if not good, yet to put it in a good case by making it plausible, so that I am encouraged to vndertake it with this consideration; that where I am found weake and wanting, they are sufficient and ready to succour and supply; if they shall apprehend the exceptions peremptory and pertinent, and any impeachment to their practise and power. As they that haue made triall of their strength haue found, though they were of the strongest and most popular partie, which they the more wondered at, since they knew they had but few friends, and themselues small in number, especially in the beginning of the reformation

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tion when there was such scarcitie of Civilians; that the Vniversities tooke little notice of their degrees or profession, or the Courts of their practise: but now wee haue a most happy and hopefull increase, and it were to be wished that the land were more stored with able Civilians, though they be not pragmatiques; I meane that the knowledge of the Civill law were more regarded, though the practise keepe but the same degree of respect; for then should wee haue more able Common-wealthes men at home, and more absolute Statie-men abroad; for all the nations round about are ruled by the Civill law, as we are by the Common law: onely they haue some particular decrees, manifestations, and sanctions, as wee haue statutes and Acts of Parliament; and so by that law the treaties we make for matters in question are to bee decided by that law, that which is determined by consultation, and agreed upon, is to bee concluded: so that it must needs bee, that he that is well seene in the Civill law is best able to treat with them with more honour and lesse danger to the state, for in them there is onely the feare and danger of perfidiousnesse, whereas the other may want honesty and ability both, though their instructions bee never so punctually accommodated. And this is one maine reason (as well as the Popes power) why many Deanes, Bishops, and Lord Chancellours, who were Doctors of the Civill law were sent Embassadours, when the Nobility had not so much law and learning as now they haue; so that for this last present age we haue not lost so much in treating with *France* where the Civill law is most practised, as to con- Comment. Lud. 11. lib. 4.

firme or continue the proverbe which I finde mentioned in *Phil. de Comineus*; *Pactio nulla inter Gallos & Anglos*— in which the *French* did not get the better, *adeoque proverbio dicitur apud Anglos, quoties cum Gallis prælio certaverint, victores plerunque fuisse, quoties verò cum illis pacti sint detrimentum semper aliquid accipisse*, which was most

most verified from the time of *Edward* the 3. to *Queene Elizabeth*, but it is probable their over-reaching was much helped forward by dishonesty, where they found any little want of ability: but grant it were the disability of our agents, especially in the ignorance of the proceedings and advantages of the Civill law in busines of trans-action wherein the *French* were defendants and passivue; yet it was not any honourable advancement to them, though it were some small disadvantage to us: for it is a disgrace for a Prince to stand strictly vpon tearmes, trickes, and turnings of law in the interpretation of treaties; as *Maurice* Duke of *Saxony* told *Charles* the fift, when contrary to agreement, he detained *Philip Landgrave* of *Hessen*; at ego (saith he) *te tanquam Imperatorem, non tanquam iuris-consultum & legistam, volo pactiones & fœdera interpretari*. But since treaties are too often so interpreted, it is in all probability a great assurance of safety in treating to understand the Civill law, at least in the proceedings; and hence it is as I conceiue that in *France* and *Italy* it is so much esteemed; so that in *France* most of the ancient Nobility were students in it, and had amongst other privileges, that they may take the degree of Bachelour at law in three yeares, as it is plaine in the pragmaticall sanction; which particular is also confirmed by the *Concordata Gallie*, by *Leo* the tenth; *Bacchalaureo iuris Civilis si ex utroque nobilis, triennium satis erit*. In *Italy* also it hath beene highly esteemed, especially in the first receiving of it under *Lotharius secundus*, in the yeare 1125: for he found a copy of the Digest and gaue it to the *Pisans*, which was then called *litera Pisana*; but when the *Florentines* tooke *Pisa* (as *Laurence de medicis* told *Politian*) it was translated to *Florence* and made *Pandectæ Florentina*; *ibi verò in curia loco celeberrimo summa religione servatur*: and they did not use in those dayes in the first erecting of their Dukedome, to esteeme any thing which they found not beneficiall

Carolus Molina-
us consilio se-
cundo in causa
Philip. Land-
grave: Hassia.

Prag. sanctio
tit. de collatio-
nibus.
Concordat Gal-
lie tit. idem.

Angelus Polit.
epist. lib. 1.
est. 4.

beneficiall for the state. But I leaue the commendation of the knowledge of the Civill law to those that know it better, and haue found the helpe of it in long publique practising; and betake my selfe to my vndertakings, to discard some exceptions against the professours of it, who are Officers practising in Ecclesiasticall affaires.

They are excepted against by some that are of the faction of irregular Protestants; that though the Church of *England* approoue not the *Geneva* discipline, yet the principall point is practised in it; in these our Lay Elders: thus they seeke to defame our government by reporting it to bee confused and wanting vniformity. But to discover and discover this groundlesse exception, the very supposition whereon it is grounded is absolutely false; for though we will not deny that our Ecclesiasticall Officers be Lay men, yet wee will not grant them to be Elders of the Church: we haue no such Church Burgeses, neither doe they take any such Eldership vpon them, since they know full well that it belongeth only to spirituall persons; which they confesse and professe they are not: as that profound Civilian Dr *Couzins*, wee are no spirituall persons as some tearme vs, but Ecclesiasticall: now in my understanding there is as much difference betwixt a Spirituall person and Ecclesiasticall, as betwixt *Ecclesiastes* and *Ecclesiasticus*; the one of which is Canonically, the other Apocryphall; though he be a Canonist, I dare without any scruple grant them to bee Lay men, not onely because it takes away the ground of the exception, but also because it is not any hinderance to their being Ecclesiasticall Officers; for the Cannon law which is very strict in this point admits a threefold division of Ecclesiasticall persons; as *primò, in sacris; secundò, in sacris & sacerdotio; tertio, nec in sacris, nec sacerdotio, vt monachi & legiste ecclesiastici*: and such doe the chiefeft among them account themselves, for they are well contented to goe for Commons

Exception 1.

n.

D. Couzins
his apology for
proceeding in
high Commis-
sion. 3. part.
cap. 22.

Guymer Com-
ment: in prag:
sanction: proa-
mio.
Brissoni Lexi-
con. 11.

Tacitus Annal.
lib. 3
Extrav. fol. 22.
ut. execrabilis,
§. caterum.
Linwood lib. 1.
de sequestratio-
nibus.
S. Thom. Smith
de repub. Ang.
lib. 3. cap. 8.

mons in the high court of Parliament. Yea a most eminent Chauncellour of late refused when his Bishop would haue cholen him a member of the Convocation house, and that because hee held himselfe a Lay man; and so they liue in our particular Parishes as other Lay Parishioners, paying Church dues, and are alike subject to the jurisdiction of their appointed Pastours in *foro conscientie*; and in thus doing they doe declare their exact knowledge in the Canon law, and pure practise of the Civill: for by the Common law where *Doctores divini & humani* are opposed, Doctors of the Civill law, yea & Canon also are counted humane, and Lay Doctors: for the Clergy (as *Brissoni* defines it out of *Smidas*) is *Σύσπασα τῶν διακονῶν καὶ πρεσβυτέρων*. But fully to cast of this exception, I deny them to bee Elders of our Church; for Elders here I vnderstand in relation to Church government, and in that sence there are no Elders with vs in our Church but Ordinaries; and our Ecclesiasticall Officers are not Ordinaries, neither doe they vsurpe any such power; but their modesties are many times forced to take the title and tune of the title from some obnoxious fawning Clergy men, who are more sordidly slavish then they would haue them: so that though of discretion they will not say to them as *Tyberius* did to the servile senate, *O homines ad servitutem paratos*, yet they cannot chuse but thinke so, for they know that by the Canon law there is no Ordinary *Iure* but a Bishop, *per Ordinarios iure intelligimus Episcopos*, neither any by privilege and custome but a Deane, or an Archdeacon. And they doe as fully understand that in this Church there are none but what the Canon law allowes: as *S. Thomas Smith* in his discourse of the Common-wealth of England, saith, by an Ordinary we understand a Bishop, or sometimes an Archdeacon or a Deane, who are so by privilege; or a long prescribed custome. Now they are not Archdeacons nor Deanes as I would they were, and many

of

of them haue beene heretofore, as *Petrus Blesensis* Archdeacon of *Bath*, who was Chauncellour of *Canterbury*, and Chaplaine to *Henry* the second: for then this exception and all others would bee of no force. But they are now no such Ordinaries as are Church Elders with us, I will grant them in a large sence to be Ordinaries, (as *Guymerius* the pragmatique) *Ordinarios latè volo collatores beneficiorum, & patronos Ecclesiasticos*, (as *Glanvill* calls Patrons) *advocatos Ecclesie*, in such a large sence it is properly extended to these Ecclesiasticall Officers; but Ordinaries properly they are not, and that appeares out of the offices they execute in relation to these Ordinaries, for they are their Deputies, Delegates, Vicars, Officialls, or Commissaries, which are officers distinct and derived from their Ordinaries: of all these the Bishops Vicar hath most reason to be tearmed an Ordinary, & yet he is none; not onely by the Civill law which makes him a minister of his Ordinary, *Vicarius est qui suo Ordinaris subministrat*, but also by the Cannon law, (as *Prateus*) *Vicarius & Ordinarius distinguuntur, nam vicarius est quasi servus in peculio*: (or as *Suidas* calls him) *ἀσὺς* substitute, *Βικαριος* παρὰ τοὺς ἀρχιεπισκοπικούς; and *Panormitanus*, *jurisdictio Ordinaria non extinguatur per mortem illius qui dat, jurisdictio vicarii est suspensa suspensio Episcopo*, and *Durantis* affirmes as much; *Vicarii nequeunt officia sua exercere Episcopis eorum excommunicatis*, and therefore they doe well in clayming no such power; as *S^r Thomas Ridly* learnedly discovering the originall and reason of their practise in the Church, concludes, that Civilians or rather Legists who were anciently called Church Lawyers, or *Ecclesiastici*, were brought into the Church to direct Bishops; and the Chauncellours at this day are the very same in office with them, being assistants of the Bishops in their jurisdiction. And *S^r Francis Bacon* in his cautious consideration of Church government, agrees with him in the approbation of a Bishop

H. 2.

Comment. in
prag. sanction.
tit. de collat.
S. Ordinarios.
Glanvill. 4. c. 10

Briffonius Lex.
verbo vicarius.
Prateus Lexi-
con. juris Canon.
verbo vicarius.
Panor. in decre-
talista de juris-
dict.

Durantis in
specu lib. 1. par.
1. tit. de iudice
delegato.

Sir Thomas
Ridleyes view
of Ecclesiastical
and Civill law.

Sir Francis Ba-
cons considera-
tions to his Ma-
jestie. 2.

shops being attended by his Chauncellour, who should be learned in the Civill law for his better instruction in points of formality, in the proceedings and courses of their Courts: And for the same purpose should Deanes and Archdeacons haue their Officialls and Commissaries to inable them to runne through the multiplicity of causes, to cut off or shorten delayes, which in all businesse, especially Ecclesiasticall, are tedious and odious: and indeed none are more able in this case to assist them, and reduce causes into order, brevity, and paucity; as *Thomas*

Thomas Aquin. prafat. to his summes.

Aquinas saith, he compiled his summes to compose and compound controversies, take up and take away all questions. And therefore I doe not a little wonder at *D^r Cowell* who was a most able Civilian, that hee should account Commissaries or *Officiales foraneos*, onely vsfull in petty peculiars, exempt from the jurisdiction of the Archdeacon, otherwise to be superfluous and a needlesse vexation and oppression to the Countrey: surely hee meant it of some such scandalous Courts as *Duarenus* (another learned Civilian) complaines of. *Auditoria Vicariorum & officialium Episcoporum, quacunque profana tribunalia, imposturis & strophis forensibus, longè superant*: but let him thinke what hee will, I am sure wee see of what good use they are, and yet they are not Lay Elders of the Church.

D. Cowel. interpretat. verb. Commissary. Duaren. de benef. & officijs Eccles.

Exception 2. *Excep. 2.* Is, that the power of jurisdiction Ecclesiasticall, cannot be granted to Civilians, that are meere Laymen.

I could soone answer this exception, by denying them to be meere Lay men, and so I would, if I had no other way to avoyd it. But I am willing to giue them satisfaction, and not to cavill, and therefore will answer punctually: and that I may so doe, and they so apprehend it, let them but consider with me a two-fold power of Ecclesiasticall Iurisdiction, Ordinary, and Delegate; the later and lesser of which, may be lawfully granted to them; especially

Linwood. lib. 5. tit. de pralati vicar. verb. ad firmam.

especially, if wee admit the differences and degrees of their commission, which are approved and practised in our Church government ; both in relation to the power that grants them, and in respect to the extent of the grant. First for the power granting them, they are all originally derived from the Crowne ; but some haue their power more immediately, as the high Commission haue it vnder the broad Seale : others receiue it more mediately, from their Bishops, Deanes or Arch-Deacons : so for the largenesse of the Commission, which is *ad vniuersitatem causarum tanquam Ordinarius*, as the audience of high Commission (and not without good reason, since no cause is to be there determined, at least not sentenced, without the consent of foure of the *Quorum*, which must be, as I am informed, Bishops :) There is also a speciall Commission of Oyer and Terminer, in some particular causes ; and lastly, a Commission, which, according to Law, is *restricta ad instantia*, which Linwood Official of Canterbury saith, doth belong *officialibus principalibus*, which wee call Chancellours : Yet I doe not beleue (by his leaue) that they are so restrayned, as to a bare cognition, without a definitiue sentence, though the phrate, that is vsed to expresse busines of instance, be, matters of Ecclesiasticall cognizance ; for, *Cognitio non est jurisdictio*, especially now since the Lawes haue ordered, that if they be not in sacred orders, they must be assisted by a surrogate, who is a Minister, and hee is to pronounce sentence as principall Iudge ; which practice hath made some of opinion, that anciently they were assistant to the surrogate, as assessours ; which seemes probable, because the exact knowledge of the Law is expected from an assessour, not from the principall Iudge (according to the most conscionable Casuists :) *Ignorantia juris non est peccatum in iudice, sed est in assessore*, as the Masters of the Chancery, who are assessours to the Lord

Linwood l. 2.
tit. de sequest.
verb. offici-
alis.

Cujacius de
orig. iur. Civ.
§. Consul.

Navar. de pecc.
Iudicis, §. 7.

Cujacius obser.
lib. 23. c. 40.

Chancellour or Keeper, there is required exact knowledge, though not in the superiour Iudge, as in the assessors of the Prætor amongst the Romans: *Si Prætor per imperitiam iuris iniquum ius statuerit, non punitur; assessor eius punitur, quia ad assessor se pro iurisperito agit.* So that though this opinion be not true, because Iurrogates are not of such antiquity; yet I perswade my selfe without any doubt, that they were, and still are *tanquam assistentes assessores Episcopis & Archidiaconis*; though they haue also a delegated power. And this kinde and degree of Ecclesiasticall power may be granted to them, though they be meere Laymen; and I beleue our Church would not haue disliked the Geneva government so much, if they would haue chosen such for their Lay-Seignours, as had knowledge in the Ecclesiasticall Lawes; as if Doctor *Hottoman*, professour there, and Reader of the Civill Law, had beene joyned with reverend *Beza*, then Divinity Reader.

Excep. 3.

Another Exception of like nature and moment, arising from the former, is, That vnder the colour of a delegated jurisdiction, they take vpon them Episcopall jurisdiction, and performe all the offices of a Bishop, in relation to Ecclesiasticall government.

25. Hen. 8. c. 3.
Summa bullarij
in Pio 4.

This Exception is not peremptory, but dilatory and declinatory, full of impertinent surplussage, vrging nothing, or that which is false; for no man will vndertake to answer what they doe, but what they should doe: *iure nostro Ecclesiastico*, I am sure *iure nostro Canonico Anglicano*, publickly knowne, and by the old Canon Law which may here be practised, (where it is not contrary to the Lawes of the Land) they are not to exercise any such power, as doth personally belong to a Bishop, either as he is Diocesane, or as he is Ordinary, *in puris spiritualibus*: neither doe I finde, that ever any Vicar did vsurpe or desire any such power, but onely Cardinall *Wolsie*, who desired

desired Clement the seventh ^{à farlo} suo vicario universale in Francia, in ~~England~~, & in Germania, mentre stava in prigione, his Vicar generall in France, England and Germany during his imprisonment; which he could not doe by Law, being his Ordinary and suspended, if not *ab officio*, yet *a beneficio*: and if it had beene lawfull, yet the Pope had betrayed his weaknesse much to grant it, with that condition, during the time of his imprisonment; for the Cardinall would without doubt haue endeavoured to keepe him there still, to continue his vicarship. And moreover this, I finde that by the Canon Law, *sede vacante*, the Deane or Chapter is successour, or rather administratour to the Bishops in their jurisdiction, and guardian of the spiritualties; and no marvell, for they are called *fratres Episcopi*, *Cardinales Papa*; they can dispence in *causis Episcopo reservatis*, and call Convocations, to which the Bishops Vicar may not be admitted; & *possunt condere & revocare statuta*. And during the life of the Bishop, the Arch-deacon is his Vicar *iure* (as Zerola) *vicarius natus*, (as Hostiensis) which they vnderstand in respect of jurisdiction in *spiritualibus*; for not they, but the *Archipresbyter* is Vicar in *divinis*, which is, in *spiritualibus*, in relation to the power of order: So that you see, they take not any such ordinary power vpon them, but leaue it to the Bishops, and their most naturall and lawfull Vicars in that power; and yet they may be their Vicars in *Pontificalibus* (as the Canonists expresse it) which is, in those causes that belong to their Sees, as they haue peculiar and prerogative Courts; and such may be Lay-men according to the most moderate moderne Decretists; *Syndicos* (saith Duarenus) *sive defensores, & apocrisarios sive responsales laicos posse esse*; though by the old Canon Law *Vicarius Episcopi debet esse Clericus*. And it is counted one of the insolent rare actions of the Popes, *causas Ecclesiasticas Laicis delegare*: This jurisdiction they may haue

Guiccardini.
lib. 18.

Latus Zecchi-
us de prerog.
capitul. §. 13.

Zerola in prax.
Episc. verb.
Archid.

Formula visi-
tationis Coloni-
ensis.

Duarenus de
officijs Eccl.
l. 1. c. 12.

*Durand. de o-
rig. Juris. Eccl.
Con. 2.*

*Cypr. Epist.
Rogat. Episc.*

*Formula visit.
Dioecesis Colo-
niensis.*

*De perpetua
guber. Eccl.
cap. 14.*

have without any trenching vpon the office of a Bishop in his personall jurisdiction, which I conceiue cannot be delegated to a lay person; being that jurisdiction, whereby he doth exercise and execute his correctiue, coercitiue, coactiue power, which is the instrument of his pastorall paternall care over his Clergie, and proceeds from the power of consecrated order, and is inseparably vnited to it: which power, I finde fully, yet briefly expressed by S^r *Cyprian*, speaking of a contumacious Deacon to his Bishop; he adviseth the Bishop, *vigore Episcopalis cathedrae aut deponas eum aut abstineas*, either to degrade or suspend him; neither of these will a Lay delegate doe; yet I grant he may suspend, if not *ab officio*, yet *a beneficio*. And for their visitations, which are an act of ordinary jurisdiction, they performe them not *ex officio*, but by a speciall commission. And for the forme and force of their inquisition in them, it is not generall concerning the doctrine and manners of the Clergie, but directed and restrained according to the Bishops Articles, and without requiring an oath of the party presented; *visitatores interrogabunt absque exactiōe iuramenti*; yet I doe not disapprove that an oath should be required vpon a fame, because it respects as much the purgation, as the conviction of the jurant.

And for the sentence of excommunication, which some make the proceſſe of spirituall Courts, in point of contumacy; I am not able, I confesse, fully to satisfie in that point, but I dare subscribe to what iudicious Bishop *Bilson* saith of it, to cleare it; who, I am sure, could and would say as much in the behalfe of Ecclesiasticall officers as any Bishop of his time, who speaking of the power of Excommunication, saith, *Nequaquam sibi clauium potestatem assumunt, sed poenam ob contumaciam infligunt, quā omnes illa animadversiones continentur, quae legibus in eos sancita sunt, qui claves Ecclesiae temerè contemnunt, quocunq̃ue*

cunque nomine appelletur, siue suspensio, siue condemnatio, aut excommunicatio nil refert, dummodo ne potestatem hanc divino, sed humano iure sibi vendicent, nil causa tunc est, quin Iudices civiles delinquentem in pœnam Canonis incidisse declarent. But the maine ground of these, and such like exceptions, is, because Civilians are not in orders with vs, as most Canonists be beyond the Seas, (though they haue no title, and are but *Presbyteri Vtoperiani*, as *Duarenus* calls such) if then our Ecclesiasticall officers were all in orders, as some of them are, then they could not with any reason except against them for Lay-men, no more then they can against the Pontificall Canonists, who haue farre more Ecclesiasticall power, especially the moderne Legists, and are as able to judge of heresie, as the Duke of *Bavaria* vnder *Zachary*, who condemned *Virgilius* Bishop of *Saltzburge* of heresie, because he affirmed, that there were *Antipodes*; when as *Isidorus Hispalensis* was not condemned for holding hell to be at the *Antipodes*, neere three hundred yeares before. Yet these are the only men that are now judges of heresie, which makes modest *Melchior Canus* complaine, *Non video quonam consilio in cognitione hereseos, partes postremae, ne dicam nullae theologiae permittantur; jurisconsultis verò vel prima, vel etiam omnes.* When as with vs, not our Chancellours nor

Aventin. Annal. lib. 3.

Tho. Aquinas suppl. qu. 95. Art. 9.

Melchior Canus lib. 8. cap. 7.

1. Eliz. 1.

Commisseries, nor our Bishops alone may determine of heresie: and yet I beleue any of them haue as infallible assurance of truth, as immediate vocation, commission, assistance by inspiration, as all they; but onely they are in orders, ours are not; as the twelue auditors of the overruling Court of the *Rota* are the Popes Chaplaines by their office, (as *Lelius Zecchius de auditoribus Rota*) and so are those irrefragable referendaries: and the Popes finde great good in having them in orders; for you shall not find, but the Canonists haue alwayes stood for the Popes prerogatiue; but onely in *Concilio Pisano Guic-*

ciardine saith) they that were for the Councell which was called against *Iulius secundus*, by some of *Lewis* the twelfthes faction, *Che de canonisti autoritata del convocare i Concilii, nelle risedere solamente, persona del Pontifice*. But it was not so much the Canonists, as one principall one, which was *Philippus Decius* of *Millaine*, where the Councell began, who defended the cause, as appears out of *Carolus Molinaus* his Annotations vpon *Decius* counsels; so that the Popes knew what they did, when they shewed and granted so many favours and priviledges to the Vniversitie of *Bononia*; as *Gregory* the ninth dedicates his Decretals to *Bononia*, so *Boniface* the eight his Sext, and *Iohn* the two and twentieth his Clementines, and Extravagants; thus they are formally qualified by orders; and because our Ecclesiasticall officers are not so, some take and make these exceptions: so that I will conclude this brieve Digression, with this wish, not altogether voyd of hope: I would more of our learned Civilians were Divines, or more of our judicious Divines Civilians, *Cam Theologia & Ius Canonicum fraternizent*.

Guicc. hist. l. 9.

Car. Mol. annot. in Decij Consil. 37.

Abbas Panorm. Lect. in Decr. 120.

THE



THE SECOND CONCLVSION.

*That vnder the dominion and protection of this
Civill State, this State Ecclesiasticall is most
likely to enjoy all those rights that can any
way belong vnto it.*



Hough they that sit at the tops and steernes
of States, amongst all their great and graue
cares, doe little regard the opinion or cen-
sure of private men, since they are no
bound to giue areason of their lawes, nor
an account of their actions, their admini-
stration being absolute. Yet if by these lawes, private
persons deserue and suffer publick punishment, not on-
ly for offering private wrongs, but also for with-holdir
particular rights : surely these law-makers and Admini-
strators of justice, that will not suffer injuries vnpunish-
ed, will be so farre from doing wrong, though it be but
to poore and private men, that they will feare, though
they cannot flie the suspition of it, and be as carefull to
obserue a just and geometricall proportion in the distri-
bution of dues and duties. Now if private and common
subjects are not onely secure from injuries, but also ac-
cording

cording to due desert publickly regarded, and rewarded
 for their particular service to the common-wealth,
 though their ayme be but at their owne personall and
 private profit ; one may safely conjecture, that the pub-
 lick and politick parts and pillars, the distinct and settled
 societies of that State shall be as strongly secured from
 detriment by wrongs, and as freely and fully favoured by
 advancement in rights. Yea it may be fully presumed,
 where a State is so framed, that they are all vnited in one
 head, without dependance and subordination to each o-
 ther. As in a Monarchie, which with an equall impartiall
 proportion, giues protection, distributes rewards; when
 as if their vnion and communion be continued by a colla-
 torall relation, and mutualitie of members, their equality
 of power and desert would breed emulation, if not envie
 and indignation, and make them ingratefull to each other,
 if they be not injurious. As it is where the government is
 Aristocraticall, which may be seene in the envious ostrac-
 ismes of the *Athenian, Ephesian, Venetian States*: *Thucy-
 dides historicus in exilium pulsus erat, quæ fortuna opti-
 mo cuique Optimatum Athenis accidere solet,* (as *Paulus
 Iovius* saith of the *Venetian* common-wealth.) *Neminem
 temerè ex Optimatibus qui vel insigni virtute, vel spiritu in
 gerendis rebus, ceteris antecellat, potentem & clarum fieri
 patiuntur.* So that it is but a perverse and peevish para-
 dox in *Machiuell*, to hold, that a princely Monarch vses
 to be more vngratefull, than free and popular States,
 when as they either retorne malice and mischief in re-
 ward of singular merits ; or if suspicion, which he makes
 one ground of ingratitude, doe not make them, at least to
 suspend them by a relegation ; yet avarice, which is his
 other ground, will make them really ingratefull, though
 formally they pretend a reward. For if they giue any
 thing, it will not be worth the taking, *in statu populari &
 liberis civitatibus, premia liberalitatis plus habent honoris
 quàm*

*ἡ δὲ καὶ ὁδο-
 υς αὐτῶν τῶν
 δουλοῦς Arist.
 lib. 2. c. 12.*

*Cicero de Orat.
 lib. 2.*

*Iovius Histor.
 lib. 1.
 Machi vel. dis-
 cor. 1.1 c. 29.*

quàm utilitatis; they bestow nothing but vaine, vanishing, *Bodinus de re-*
 empty, and aërie titles, which are blowne vp, blowne *pub. lib 5. cap. 4.*
 out, and blowne away with the breath and voyce of the
 vulgar that gaue them, so that they doe him that is grati-
 fied no right and reall good: *ἔχρεις φᾶνλα δ' ἐναῖ, ὅδεῖς γ' Ἀριστ. Rhet lib.*
ὁμολογεῖ διείσθαι φάυλον; it is not gratifying to giue things *2. cap. 9.*
 that are contemptible, for no man will confesse that hee
 hath neede of them, but these toyish titles doe men
 more harme then their ingratitude could. For titles
 without proportionable estates; doe not onely fall vnder
 the miserable succour of other mens pittie, but are also a
 temptation to provoke all men to contemne them. But
 one maine reason of this difference in rewarding is, that
 Aristocracies respect themselues in it, when as a Monarch
 to whom all giue due and loyall respects, doth powerfully
 protect and royally reward with respect to all. But as
 all our moderne Monarchies are distinguished into socie-
 ties, as in some Kingdomes there are fīue States; as in *Theſaurus Pol.*
Apotelesma 50.
Denmarke, France, and in Brittain three, which as they
 are subordinate and inferiour one to another, so the su-
 preame Governour doth regard and respect them with
 different degrees of favour and care, with consideration
 of what consequence they are to him, and so proportions
 pensions, and of what need they stand of him; and so af-
 fords protection, searching into the severall circumstan-
 ces of their employments and abilities, as of what vse
 they are in point of necessitie, vtilitie, and honour. Now
 all these three States are necessary, profitable, and for ho-
 nour of the Prince, but not equally at any time, nor con-
 stantly at all times; neither in respect of peace or warre,
 domestique or forraine: so that as one state doth make it
 selfe more necessary in relation to an extraordinary time
 of neede, so another may be more profitable in the conti-
 nuall supplying of ordinary expences: and the third may
 bee more for the honour of a King, both in ordinary and

extraordinary actions. Now a King that preferres his honour before his profit, at all times will more respect that state which stands strongest for his honour at all times, then that which is more profitable at all times; so will hee more esteeme that which certainly supplies his ordinary continuall charges, then that which may bee more necessary, *si cœlum ruat*, vpon an extraordinary vnlooked for occasion: because wisdom is not imployed in preventing, and providing against what may be in possibility, but against what is likely in probabilitie: so that in the naturall body though there bee more continuall intercourse and mutuation of needfull supplies reciprocally betwixt the head and the heart, especially from the heart: yet those externall members that are nearest vnited to the head, haue more externall honour, as the eyes, the eares: so in the body politique, there is a constant interchange of succours and supplies betweene the state Civill and Ecclesiasticall, yet the state of the Nobilitie especially taken for the Councell, is of highest assistance, which are as it were the eyes and eares of the King in publique providence and intelligence, (as *Dion Chrysostomus*) Πέρι τῆς

His Majesties
instructions to
the Bishops.
1626.

περὶ Βασιλείας.
Zetzel Histor.
Clibias. I.

ὅτι πῶς ἔσται ὁφθαλμὸν βασιλέως λεγόμενον.

These principall Peeres that are so closely vnited to the head, that they communicate with it in the most secret and serious advisings, deservedly enjoy the fairest fortunes and favours; for it is great reason that Kings should heape and bestow vpon the watch-towers of the state the greatest and highest honours in the state: that as they are nearest, so they may be dearest, being his right trusty and well beloved Councillours. And their imployment is no more immediately eminent then the trust of it troublesome and dangerous.

§ 2 And the next state in high estimation with Christian Protentates, and with many the most esteemed in all respects is their Clergie, the state Ecclesiasticall; vpon which

which they haue heaped favours to the very exhausting of their treasures. *Imperium amore religionis semetipsum exhausisse, &c.* I am not able to reach the reason in point of state, of that extraordinary extravagant large liberalitie: but thus much I am able to compasse and conceiue, and shall endeavour to make it plaine; that whatsoever right and reason any King in *Europe* hath had for this 400 yeares to vphold his Clergie, and conferre favours and honours vpon it; our present supream head of our Civill state hath all that right, and more reason to bee as royally indulgent to our present state Ecclesiasticall, as none can deny: but as he that hath chieftly of power over the whole body of the Common-wealth, may rightly and justly favour, bestow rewards, priviledges and power vpon any publique societie, or private person in the same: so none will affirme that all that haue supream power haue the same equalitie of right, to endow with priviledges, or enrich with rewards; because that all doe grant that all Kings haue not Dominion in the same equall altitude and latitude, and so cannot so highly advance in priviledges, least they surmount their petty prerogative: nor so largely giue them power and renews, lest their extention shorten their owne. And the grounds of this inequality are diverse, in handling of which I will neither follow *Machivell*, nor *Iunius Brutus*; because I finde them to runne into two extreames, the one granting it to all out of the loosenesse of a wanton wit; the other denying it to all, being carried by the stream of innumerable particular authorities; & that because, as the other wanted conscience, so he wanted experience: or rather because *Machivell* lived when all Princes in *Italie* claimed and vsurped equall and full power, and so writ what they did, not what they should doe; and *Brutus* might endeavour to diminish the power of all, because he would not haue the *French* King haue so much, which he might thinke too much for the present:

Tacitus Histor. lib. 2.

present: if hee considered it with the times before *Lewis* the eleventh, wherein as the Peeres and Parliaments had too much, so the Kings had too little: so that their difference of Dominion is not according to that fullnesse Princes can make it when they are once in possession of a Kingdome; nor according to that diminution wherewith disloyall subjects impaire it, when they threaten and raise a rebellion; but it is according to the severall meanes whereby they attaine or obtaine their Kingdome. Now all supream Dominion in a Monarchie is attained by conquest or succession, or obtained by election: Kings that come to it by the right of conquest may haue as much power as they will take; they make their owne Charters: those that come to it by succession haue as much power as their ancestours, accepting of such lawes as they finde; those that haue it by bequest, and are adopted heires (for adoption is good by last will and testament) haue the same right that a naturall successour hath, if the adoption stand good. As the Kingdome of *France* was giuen to *Edward* the third by *Charles* the sixt: but those that are called to it onely by election, their power is restrained and curbed with cautionary conditions, and stands limited by them.

Now if all these haue great power in their supream government, by any one of these rights to attaine a Kingdome; surely hee that hath it by all these rights conjoynd, hath more power then any hath that is intituled to it but by one, especially by election. But our present gracious Soveraigne hath it by lineall succession from an absolute Conquerour, which was confirmed to his father of pious memory, by the Nuncupatiue will of his sacred predecessor, who then adopted him, and all was made sure vnto him by the electiue assent of the supream Nobility, without any crosse-course conditions, (as falls out) when the souldiers or people elect. And as it is
plaine

Cujacius observ.
lib. 7. cap. 7.

Hottoman. illust.
quæst. 1.

Brissonius de
Regno Persico.
lib. 1.

Anno Jacobi:
A just recogni-
tion of an vn-
doubted succes-
sion.

plaine that hee holds by all these, so I doe conceiue I could make it appeare, that most Kings in Christendome hold primarily and principally but by one of these, and that of least power. But that I am loath to touch the ticklish and tender titles of forraine Potentates; neither will I speake any thing of them as their states now stand, but onely in a word shew what anciently they were: for in my poore judgement their government may bee as good and lawfull, if they haue had the power and opportunity to cast off and free themselues from these bridles and curbes of government: for not the most limited power, but the best rectified is safest both for Prince and people.

§ 3 To shew then how it was with them heretofore, and to begin with the Empire after it was translated to the *Almaine*. Long hath that Empire continued by the election of the high Chamber of the *Septem-viri*, the seaven selected Electors of *Germany*; and some of the best Emperours haue so well liked it, that they haue not onely beene willing to take the promissarie oath containing diuers strict conditions, but haue also granted them new free Charters; and large prerogatiues: as *Charles* the 4. in his *Bulla aurea*, and so held so loose and light a hand over them, that one of the Electors, the Bishop of *Ments*, in the Councell at *Franckford*, said, the government was Aristocraticall, which might bee well taken if he meant it with reference to the Councell. The Kingdome of *France* Clapmarinus de Arcanis reipub. lib. 5. cap. 20. Cominaus lib. 10. Comment. Grandis de Francia la Briglia in mano. Guicciardino hist. lib. 16. Ieremie. 38. 5. seemes not to haue beene anciently so absolute and vnrestrained as now it is, for the twelue Peeres of *France*, *qui sunt ut in Germania principes electores*, had not onely royal priuiledges, and did not owe simple subjection, but respectiue homage; and had a regall authority in their seuerall Provinces, and the command of the chiefe forces: but also had the power, if not to elect their King, (as *Nauclerus* saith) and as it seemes true, because they haue
H deposed

deposed them; yet to determine, when there is no great doubt who shall succeed: and their setting alwayes vpon an heire male (which is the course of electiue state) shewes it to bee somewhat electiue; for the restraining of it to the heire male, did not primarily proceed from the Salique law, because many of their Kings haue beene *Lorraines*; which Dukes, (the *French* Civilians say) doe not obserue, nor are vnder the Salique law: but if it bee not electiue, it seemes not to be so cleare a succession, because it is a masculine feud entayled vpon the heire male: yea the predominant extravagant power of the *Parisian* Parliament seemes to intimate, that the ancient state was not so free and absolute a Monarchie; for they called in the Kings edicts, sent forth the contrary: and no appeale lay from their sentence. *Contra illud tantum supplicare licet*, a petition of right onely was permitted; so that this state which is most absolute of all others, seemes to haue been anciently not so free and uncontroleable in its government, as a free Monarchie ought to be. The next is the Kingdome of *Spaine*, which hath of old beene so disquieted with the continuall incursions and invasions of the *Moors* and *Saracens* from the South, and *Gothes* from the North, that it hath scarce time to settle, as water tossed. But when it did pitch vpon the forme of a Monarchie, it was electiue, as appeares out of the Councell of *Tolledo*; *Si quis ad Regie Majestatis pervenire fastigia ambit absque electione nobilitatis Anathema sit*: yea and in their latter dayes their forme of inauguration, doth import and imply the same: for thus it runnes, *Nos qui vale mos, tanto comme vos, y podemos mas que vos, vos elegemos. Rey, con estas, y estas condiciones, intra vos, y nos*: yea and the Justice of *Aragon* hath had as much power as ever the Parliament of *Paris*; as in plaine, not onely in their vnlimited immunities, but also the power they vsed against the Kings edicts: as may bee seene in their writs, called

Hottoman. a-
pollogia Catho-
lica. §. 6.

Gymerus Com-
ment. in prag.
sanct. tit. de
autoritate Con-
sistorum.

Concil. Toletan.
§. cap. 3.

Hieronymus de
Blanca de Hist.
regimine.

called *los manifestados*, y *iure firmos*; from which power, though the Inquisition haue freed the Kings since *Ferdinando*: yet I doe not conceiue how that state should bee more free then before, because it is vnder the power of a tyrannicall Inquisition. So that the Kings of *Spaine* had done more providently in preventing their prevailing greatnesse, if wee consider their domestique freedome in government; though their advancement may advantage them to bring forraine states vnder their seruitude. But it was hard to hinder them from at least so much power as they were able to take from the other, so that *Tullie* had no great reason to aske *Atticus*, (and that in Greeke as a secret, not to bee vnderstood of any that should intercept his letters) *ἢ εὐλαβετέον τὸν καταλύοντα μὴ ἀρῆται*, few doubt it, and this may bee most vnquestionable with *Spaine*, witnesse *Naples* and *Millaine*. These Inquisitors are like Ephori in the *Spartaine* republique, whole Kings are observed to haue the most restrained power: for the chiefe of these Inquisitors hath a great power over the King in his owne Court. *Inquisitor generalis, qui Aulam Regiam sequitur, cum adjunctis consiliarijs Ecclesiastici ordinis potestatem contra ipsum Regem usurpari potest*: so that by all this it is plaine, that the *Spanish* Monarchie hath not long beene a free Monarchie at home. But that which makes most, to proue these states not absolute, is because an appeale will lie from any of them to the Optimates and orders of their Kingdomes, for *extrema provocatio* is one principle; *inter summa iura imperii*. In *imperio tamen Germanico*, (vt testantur *pragmatici*) ad *sacram & supernam Cameram* provocatur, apud *Gallos* ad octo *curias maiores*, apud *Hispanos* ad *quatuor curias*; even as a generall Councell is aboue the Pope being electiue. As for the other states of European Monarchies, without all question they are at this present electiue; as *Poland* which made their King *Mieciſlans* send *Lampartus* Bishop of *Craco-*

Idem ibidem.
Thuan. hist. l. 9.

Ad Atticum, lib.
9. epist. 4.

Thucydides. l. 6.

Theſaurus Po-
lit. Apotel. 63.

Clapmarius de
Arcanis reipub.
lib. 2. cap. 19.

Herbert. histor.
Polonia lib. 1.

Thuanus hist.
lib. 50.

Commaus lib.
10. Coment.

Guiccardino
Hypomneses Po
lit. 106.

via to Pope Benedict the seaventh, *ut Regem se Polonorum & posteros suos esse iuberet, sed ea res propter iustas causas, ad aliquod tempus dilata fuit*: yea, it was never obtained, but it still continues elective; *Moderata est principis Polonia potestas, quia non natura legibus in paternum regnum succedit, sed communibus suffragiis senatorii & equestris ordinis & publica exclamacione uobilitatis eligitur*. Hungary also is elective, although the Spaniard hath intailed it upon the match with the Infanta, which will easily bee cut off, and suffer a recovery into the former freedome. In *Hungaria liberam habent electionem, & inde ab eius morte proceri Buda conveniunt*: I might shew the like of Denmark, but no more of that, I know not how this may be taken; but I hope well, because in this I deliver onely what is licenced intelligence, even as *Honorius* and *Theodosius* did interdict, *ne alicuius regni arcana scrutarentur*; but it was with this Proviso: *Legatus tamen reversus omnia narrare debet*.

§ 4 These instances are sufficient to prove that our present Prince hath most vnresistible power, and so most vnrestrained right to favour, and freely bestow immunities, priviledges, and renewes vpon any single society, or singular person within his Dominions. Now the next thing to bee proved is, that as hee hath more right to shew favour to what state hee will; so hee hath more reason then they all to favour his Clergie most. This government of our King is not more free in it selfe then it is freely and willingly sustained; which shewes that it is the ancient equall, and as it were the most naturall government of this Iland, and therefore the power is most right; because naturallized by custome when as in other Kingdomes, yea in many pettie particular states; that little power they haue improoved by force, they keepe and exercise by the same meanes. Hence it is that they dare onely trust forrainers to be their guards: as the

French

French haue the Scots, and Suitzers; the Dukes of Florence, the low Dutch, which choyse doth either proceed from tyranny in the Kings, or perfidiousnes in the nation, *ὁ δὲ βασιλεὺς τὴν ἐλευθερίαν αὐτῇ τὴν φυλακὴν*, as for instance, the first Dukes of Florence were esteemed no lesse, for it was libell-wise written over the doore of Cosmus, De Medices (the first Duke) where he was sicke, and tooke phy sick, *qui Medicè vivit, miserè vivit*, which they vnderstood of the Medicean tyrannie, both in respect of his feares, and their wrongs in his oppression. And in this age there were some, that would haue brought an Italian guard into France and Scotland, but it was when they aspired to vsurpe them both; *Guifiani Italorum custodias* *Thuan. lib. 23.* *quòd assuetis negotiis suis, non satis fiderent, adhibent, sui potius quàm regni, aut regis munimento*; when as our Kings haue found out by long experience that to be true, which Dion Chrysostome told Trajane the Emperour, *τὸ δὲ Dion Chrysost.* *ὅτι ἐστὶν ἀλλὰ φυλακὴ πλὴν ἀγαπᾶσθαι*, so that they regard no *δὲ βασιλεί-* guard, but the loue of the subject. But to returne: It is as γ. no small encouragement to me, before I argue it in any point, and a strong argument for me, that a sacred Sovereigne hath and doth proue it true, in his most royall and religious practice. For I doe not beleue, that there hath beene any Emperour, Monarch, or Potentate since Charles the first and the great, that did ever so truly and constantly favour, and carefully protect a poore Clergie as hee hath done. But let vs consider what great reason of this favour there is: wherein I will not search vainly into his Majesties particular reasons, for I should not be able to finde them out, because a Kings heart is not to be founded and searched by a private head, that is not able to conceiue the heighth of their ends: but I will discourse of it as hee is our King, if from a single relation, there doe arise as singular respect, surely a double portion of respect will follow a double relation. Now this Aristocraticall Cler-

gie haue not onely relation to their Prince, as hee is a crowned King and they his lawfull subjects, but also as hee is the Lords annoynted, defender of the faith, according to his iust title (as his Maiestie pleases to speake in his declaration before the Articles.) For they also are the Lords annoynted, deliuering that faith; and the *Primate* of them, the immediate instrument of his consecration; so that as by the crowning, they are by right his subjects, so this annoynting of God, superinduceth a brotherhood betwixt Kings and Bishops (as *S^r Francis Bacon* in his Booke to King *James*) for this relation is onely ancient in our Kings amongst the Princes of Christendome; for though, as our Soveraigne is crowned by the Archbishop of *Canterbury*, so the Emperours when they were Kings of *France*, began to be annoynted and crowned by the Archbishops of *Mentz*, *Collen*, and *Trier*, as they were Emperours; and by the Archbishop of *Rhemes*, as they were Kings of *France*. Yet the Kings of *France* of the first line, at least, were not annoynted (as one of the freest Historians confesses) *De la premiere Lignée oinct ny sacre à Rhemes*. And though the Kings of *Spaine* are crowned by the Arch-bishop of *Tolledo*, the Kings of *Denmarke* by the Arch-bishop of *Vpsale*, the Kings of *Polonia* by the Arch-bishop of *Guesfre*, the Kings of *Hungarie* by the Arch-bishop of *Strigon*, the Kings of *Navarre* by the Bishop of *Pampolune*, yet none of them were anciently annoynted. Now it cannot be denied, but as this reall relation doth more peculiar and appropriate the State Ecclesiastick to our King, so it makes him not onely the supream head and governour, but also the chiefe guide and guardian: for by it he is more than a meere Lay-man; hee is a mixt person, having supream Ecclesiastick as well as Civill government, *Reges sancto oleo uncti sunt spiritualis iurisdictionis capaces*. Which sentence was applied to our King, in the time of *Edward* the

*Girard du Hal-
lon des affai-
res 1. 2.*

*Vid. Legibus
sancti Edwardi.*

the third : And *Guymer* in his Comment on the pragmaticall sanction of *France*, is peremptorie *quod Reges inun-*
di non sunt meri Laici; and addes, *inde Reges Anglia con-*
ferunt beneficia. So that by this is there some addition
 granted to the power of Princes over the Church.
 Though the old glosse vpon the *Clementines* avouch, *quod*
unctio nil addit ad potestatem Imperatoris, which the Gre-
 gorian edition of the *Common Law* did well to dislike,
 but they should haue done better, not to haue given a
 worse. And if it adde to their power over the Church,
 then as they haue more right by it, so they haue more
 reason from it to doe what good they please for the
 Clergie. So that, doe but consider the quality and quali-
 fications of our Kings person, to doe for his Clergie, and
 you will say, he hath greatest reason of any Prince. Con-
 sider againe the reasons on the part of the present State
 Ecclesiasticall, and you shall finde, that they deserue
 more of their Prince, than any Clergie these foure hun-
 dred yeares.

§. 5. But I must presuppose before that will be gran-
 ted, that our *Monarch* of great *Brittaine* hath not any
 reason to giue or bestow meanes and revenues vpon any
 forraine State Ecclesiasticall. No Prince hath reason to
 bestow his free favours vpon any, over whom hee hath
 (for the present) no right to rule, nor hath heretofore
 promised it, neither by himselfe, or by his predecessours,
 and thereby bound himselfe to farther and favour them.
 So that, though the *Romane Clergie* doth claime and cla-
 mour for revenues and priuiledges from our King, yet as
 they haue no right to claime them, so they haue no reason
 to expect them : for they are so farre from being his de-
 serving domestick subiects, that they are his deadly ene-
 mies, though they be imbred and homebred. They haue
 not then any right; for neither our K. nor any of his law-
 full predecessours, did ever binde themselves to any such
 perfor-

33. Edw. 3. tit.
 Aide le Roy.

Grymerus tit.
 12. §. 9.

Clement 1. 4.
 tit. 6. verbo
 Regis.

performances. Later & better learned writers of the Romish faction, finding by the carefull and curious examination of sundry passages in infinite interpreters, how hard a thing it was, to proue their vniversall supremacie *in temporalibus*, by direct evidence out of Gods word, resolve to proue it by Charter-grant, and priviledge from Princes pieties, as *Augustinus Steucus* (Librarian to Pope *Paul* the third) sets downe the claime the Pope laid to all the kingdomes in Christendome, grounding all from the particular grants from the Kings, but especially *Boniface* the eights letter of Demands. As for instance, from *Constantine* the first and the best, and *Phocas* the first and the worst, from the vniversall gifts of those vniversall Emperours, they ground a generall right in all kingdomes. The *Bononian* Canonists deale cunningly, and seeme to deale ingenuously, playing the sophisters more than the sycophants in this point, discoursing of this donation of *Constantine*; for they lay it downe as a presupposed presumption in the Law: That there is such a true deed, notwithstanding there be no mention made of it in any part of the sincere Civill Law. *Sed quæ notabiliter sunt, specialiter notanda sunt.* But they never question it *de facto*, but enquire *quo iure*, and, *an sit revocabile*; and since they doe not full affirme, that he gaue it ~~vp~~ will not so much as shew the falsitie of it, but referre all to the most judicious and modestly moderate amongst them. But for *Phocas* his grant, a faithlesse vsurping tyrant, I leaue it to be judged of, by those that chuse to measure claimes and titles, by the line of equity, and not by the Last of ambition. Yet thus I will inferre against it, that a Charter granted as this was, chiefly vpon a ground of cunning, with a purpose to maintaine a plot, by partie, which was vndertaken and begun by fraud, might haue beene after revoaked by himselfe, or annulled or repealed by his successours. And farther I say, that though this grant

*Conuulsiu
prie quest.
a. i. mem. 9.
Dectus Consil.
430.*

grant were authentick in all points, yet the Popes could haue no right to this king dome by it, because this kingdome was excluded from the care, protection and providence of the Romane Empire, neere two hundred yeares before *Phocas*. For *Aelius L.* Lieutenant for *Valentinianus* in the parts of *France*, sent word to the *Brittains*, that they were to looke for no more ayde from the Empire, which was fallen into faction, scarce able to support it selfe, being thus abandoned, all lawes did free them from duty and dependance. But to make these generall grants the stronger, they pretend particular grants from our owne Kings, as from *Ina* King of the West Saxons, that was indeed religious, and from King *Iohn*, that was impious, as well *sans foye*, as his title was *sans terre* (as the King of *France*, *Philip* the second said) *Iohannes nunquam fuit verus Rex*; neither of these binde our State; for the *Peter-pence* contributed to *Rome* by *Ina*, are called in the lawes of *Conatus*, *Larga Regis benignitas*: and in the abstract (which is the best of the confessours and conquerours decrees) *Regis Eleemosyna*, which imports not due nor duty, but charity, and the Popes to be his beads-man, not the King to be his homager. There were many manifest nullities in King *Iohns* grant, for he had no right to hold the Kingdome, and if he had held it by right, yet he could not grant any thing in prejudice of the whole State, without the consent *Regni universitatis*, (as *Mathew Paris* tearmeth the Parliament) and a third nullitie is in the force of the grant, where, whatsoever is passed in the body of the grant, is resumed by this proviso in the conclusion, *Salvis nobis & heredibus nostris, Iustitiis liberalitatibus & regalibus nostris*: which being luckily inserted salues all, and makes it absolutely voyd. But the maine grant which *Baronius* relies vpon, is a donation from *Ethelulphus* King of the West Saxons which seemes very lawfull, if it were (as he saith) *salubri*

*Polyc. lib. 1.
cap. 110.*

*Baronius An-
nal. 450.*

*Math. West.
1216.*

*Math. West.
ibidem.*

performances. Later & better learned writers of the Romish faction, finding by the carefull and curious examination of sundry passages in infinite interpreters, how hard a thing it was, to proue their vniversall supremacie *in temporalibus*, by direct evidence out of Gods word, resolve to proue it by Charter-grant, and priviledge from Princes pieties, as *Augustinus Steucus* (Librarian to Pope *Paul* the third) sets downe the claime the Pope laid to all the kingdomes in Christendome, grounding all from the particular grants from the Kings, but especially *Boniface* the eighth letter of Demands. As for instance, from *Constantine* the first and the best, and *Phocas* the first and the worst, from the vniversall gifts of those vniversall Emperours, they ground a generall right in all kingdomes. The *Bononian* Canonists deale cunningly, and seeme to deale ingenuously, playing the sophisters more than the sycophants in this point, discoursing of this donation of *Constantine*; for they lay it downe as a presupposed presumption in the Law: That there is such a true deed, notwithstanding there be no mention made of it in any part of the sincere Civill Law. *Sed quæ notabiliter sunt, specialiter notanda sunt.* But they never question it *de facto*, but enquire *quo iure*, and, *an sit revocabile*; and since they doe not full affirme, that he gaue it ~~vp~~ will not so much as shew the falsitie of it, but referre all to the most judicious and modestly moderate amongst them. But for *Phocas* his grant, a faithlesse vsurping tyrant, I leaue it to be judged of, by those that chuse to measure claimes and titles, by the line of equity, and not by the Last of ambition. Yet thus I will inferre against it, that a Charter granted as this was, chiefly vpon a ground of cunning, with a purpose to maintaine a plot, by partie, which was vndertaken and begun by fraud, might haue beene after revoaked by himselfe, or annulled or repealed by his successours. And farther I say, that though this grant

*Constitutio
prie quest.
o. 1. mem. 9.
Decius Consil.
130.*

grant were authentick in all points, yet the Popes could haue no right to this king dome by it, because this kingdome was excluded from the care, protection and providence of the Romane Empire, neere two hundred yeares before *Phocas*.. For *Aelius L.* Lieutenant for *Valentinianus* in the parts of *France*, sent word to the *Brit-*
tains, that they were to looke for no more ayde from the Empire, which was fallen into faction, scarce able to support it selfe, being thus abandoned, all lawes did free them from duty and dependance. But to make these general grants the stronger, they pretend particular grants from our owne Kings, as from *Ina* King of the West Saxons, that was indeed religious, and from King *Iohn*, that was impious, as well *sans foye*, as his title was *sans terre* (as the King of *France*, *Philip* the second said) *Io-*
hannes nunquam fuit verus Rex ; neither of these binde our State ; for the *Peter-pence* contributed to *Rome* by *Ina*, are called in the lawes of *Conatus*, *Larga Regis benignitas* : and in the abstract (which is the best of the confessours and conquerours decrees) *Regis Eleemosyna*, which imports not due nor duty, but charity, and the Popes to be his beads-man, not the King to be his homager. There were many manifest nullities in King *Iohns* grant, for he had no right to hold the Kingdome, and if he had held it by right, yet he could not grant any thing in prejudice of the whole State, without the consent *Regni universitatis*, (as *Mathew Paris* tearmeth the Parliament) and a third nullitie is in the force of the grant, where, whatsoever is passed in the body of the grant, is resumed by this proviso in the conclusion, *Salvis nobis & heredibus nostris, Iustitiis liberalitatibus & regalibus nostris* : which
being luckily inserted salues all, and makes it absolutely voyd. But the maine grant which *Baronius* relies vpon, is a donation from *Ethelulphus* King of the West Saxons which seemes very lawfull, if it were (as he saith) *salubri*

*Polyc. lib. 1.
cap. 110.*

*Baronius An-
nal. 450.*

*Math. West.
1216.*

*Math. West.
ibidem.*

Baron. Annal.
Anno. 854.

Petro de Mexia
della silva
cap. 9.

Hottoman.
quaest. illust. 17.

consilio Episcoporum & Principum, but yet that deed (if wee free it from being forged) was voyd, if you doe but consider amongst many other things, the incompetencie and incapacitie of the person, to whom the deed was made. Now *Baronius* is peremptory, that it was made to the immediate successour of *Leo* the fourth, which according to all the truest writers of the Popes liues, was *Iohn* the eight, which they conclude was a woman *fu una donna natio de Inghilterra che vacata la sede Apostolica, per la morte di Leon quarto, fu eletta per sonno Pontifice di Roma* (as *Petro de Mexia*) and *Boccacio de las mugeres illustres* : the King might perhaps haue done much for his country woman, if he had knowne it, but shee was not capable to receiue such a deed to her vse, and therefore, the Iurists haue reason to make this question, *Virum acta Iohannis octavi in papatura esse debent* : And if what shee did was voyd, what was done for her is not firme, being it was given, supposing shee was capable. So it is plaine, that this engine is not able to vphold this claime, being so loose, and hanging together in the joynts like sick mens dreames, shewing their inconsiderate inconstant humours, their proofes being as weake as their imagination is strong, all standing vpon slender supposals, particular interest, making partiall. But they haue another ground for a presumption of their right, because some poore oppressed Princes haue desired to hold their kingdoms from them, as some vsurpers sought to obtaine dominions by their gift, who depose Kings, that they may dispose of their kingdoms. But this is nothing, and they stand not vpon it, but when they haue nothing else to say. I doe not by this goe about to deny, that our Kings haue beene bountifull Benefactors to the *Roman* Clergie, but this onely I stand vpon, that they haue no reason to continue so still, since they were never lawfully bound to it. Neither doe I deny, that any Prince should conferre fa-
vours,

vours vpon some forraine Ecclesiasticall State with this caution, that he be not prejudiced by the kindnes, & may haue so good vse of their thankfulnessse : As suppose any Prince should be called into *Germany*, or *Italy*, or any other kingdom, by an oppressed State Ecclesiasticall, that Prince may doe royally to invest them into their former spirituall possessions, and yet never impoverish or inflaue his owne kingdome to them, and also binde them to him for protection. Thus did *Pipine*, *Charles the great*, *Lodovicus pius*, they releevd the *Roman* Clergie, and bestowed very much vpon them in large territories, but they gaue them nothing in *France*, but onely what they recovered for them in *Italy* : it is then evident, that our King hath no reason to bestow honour or power, revenues or priuiledges vpon any forraine State Ecclesiasticall; and it is as plaine, that he hath the greatest reason of any Prince in Christendome to bestow them all vpon his owne domestick Clergie.

Dies nunquam transit, quin aliquod pium fecerit, sed ita vt Francum non everteret: (vt de Severo Lampr.)

Guicc. lib. 4. hist. Ital.

§. 6. The Nobility and the Clergie are the prime pillars of a Monarchie, and the Commualtie is the ground whereon they stand. And this they well know that intend the ruine of it, for they will be sure to strike at these two props, knowing that then it will fall, and the ground and foundation remaine to them to erect a-new; (as *Ball a Masse-Priest*, Chaplain to *Wat Tyler*, advised his chieftane to destroy all the Clergie and Nobility; so *Garner* did the Traytors in the powder-plot, (as the Earle of *Northampton* well observeth:) and therefore *Philip* the second of *Spaine*, who was seldome in an errour about the vpholding or inlarging a Monarchie, advises his sonne *Philip* the third, to stick fast to the Clergie, *los Clerigos amigo*, as I haue beene; but yet so, as you disregard not the Nobility, otherwise they will hate you, and envie them, and ruine all. Now if the Kings of *Spaine* haue reason so highly to favour their Clergie, as to feare, least their kindnesse

to them, should kindle indignation in the Nobility; surely our Prince hath more reason so highly to succour his Clergie, as that it may not be the object of the contempt of the vulgar. For the Clergie of *Spaine* and all the Romish faction are not simply subject to them, but deny Civill obedience alwayes to their Prince, where Canonically obedience commands the contrary, or priviledges above it; when as our Clergie, are as true subjects as any State, & renounce all obedience to any other Potentate. So that this hearty adherence to his Majestie, is one reason, yea they bestow all their labours in Gods service, onely in dominions expect favour from none but his highnesse; and they are more beneficiall to their King than any Clergie in Christendome to his native Prince, or any State in this kingdome to the Crowne. For though the revenues of other Clergies, as of *Spaine*, be infinitely above ours, as one of their Historians, *Opes Ecclesiasticorum panè aequales sunt secularium unà cum Regis*. Yet they are not so constantly beneficiall to the King, but to the Pope: and if the King get any good sum or subsidie out of them, it is either *la cruzada*, or tenths called *el excusado*, granted to him by the Popes indulgence; or if he cannot procure a Bull of facultie, he must get all they give by striving and force (as Cardinall *de Ossat* in his letter to *Henry 4.* of *France* speaks of *Philip* the thirds sacriledge.) *Rex Hispania omnem argenteam supellectilem Ecclesiarum & Ecclesiasticorum sacrilega manu usurpare tentat*: when as our Clergie, which have not the tyth of the tenth part of that meanes is not only now and then profitable in small matters. And if *Francis 1.* beleevd that for a great kindness from Pope *Leo* the tenth, in their conference at the interview, to have the tenths of Ecclesiasticall livings in *France* for one yeare; as *Guicciardine* in a judicious sleighting of the favour: *Promes se il Pontifice, al re dargli faculta, di riscuotere, per un anno la decima delle cheise, del*

*Nicholaus Ol
de re de regno
Hispania.*

*Ossatns epist.
274.*

*Guicc. hist. lib.
12.*

del Reame, de Francia that the King tooke the propofall into confideration, and communicated it to his Councell; who thought it a great benefit if he might haue them, *non fecundum antiquum valorem beneficiorum*, but as they are improved; furely a farre greater benefit it is to haue the tenth every yeare: Subfides moft yeares, and firft fruites the firft yeare, and that not according to the prefent value which is much fallen from the ancient reuenewes, but according to the Popes bookes, in moft, when as Ecclefiafticall preferments are abated halfe in halfe. So that as all other ftates are more charged, fo their reuenewes are improved accordingly; but the meanes of the Clergie is much impaired, and yet their charges increased in many things; in all things keepe the old rate, fo that notwithstanding the poverty (as *S Nicholas Bacon* at the Councell table) we haue no reason to exact or expect any fubfidie from the fpiritualtie, who are fo exhausted; yet it is constantly the moft beneficiall ftate of this Realme to the Crowne, both in ordinary and extraordinary reuenewes. In thefe two confiderations amongst many, wee fee they deferue much, and there is one thing that makes it more fafe for our King to beftow greater honour and priuiledges vpon them, then any other Prince; which is, becaufe he hath not the reason to fufpect them of ambitions aspiring to a Monarchie, fince they haue caft off their Church Monarchies, as the *Romans* never fufpected any of a tyrannicall vfurpation, after they had by one confent caft out the Kings: fo that though the Pope feeme to fauour the Clergy vpon good reason, yet our King hath as much, and this reason more then the Pope hath, for he hath not onely all the power of iurifdiction the Pope had over them, but alfo the reuenewes alfo the Pope had from them: and yet is without feare and danger of being rebelled againft by them, or dif-throned. But in one thing it is more capable of a royall Potentates bounty and protection, then any

*Concordata Gal-
lia tit. de Anna-
libus.*

1. Eliz. 1.

Forraine Clergie is, in respect of its owne Civill supream
head, or any state in our owne Kingdome is of our King;
and that is, that it is so poore and obvious to injuries, that
it will make the ordinary bounty of a Prince magnificent,
and make his power long, and delight to protect
such an innocent state, being neither able to
resist, nor strong to endure and suffer
wrongs: thus from the power of
Dominion passeth the in-
fluence of protection.

THE



THE THIRD CONCLVSION.

That all the rights and respects that the state Ecclesiasticall enjoyes or desires are originally derived from their relation and dependance on the Civill.



HE that hath publique power and an opportunitie to doe a great good turne for endearing a private friend that depends vpon him, will haue much adoe to forbear to doe it, though the weale publique suffer some detriment by it. Yet if his friend doe so much tender the publique good, that he will not desire any thing to the prejudice of it; surely then the publique person out of his engagements and respects to the publique good, will leaue off his present purpose and pleasure his favorite in some things that may doe him good, and the Common-wealth no harme. Even so our supream Regent of great *Brittaine*, hath great and transcendent power, and never wants an opportunitie to doe good, & bestow favours vpon the well deserving state of the Clergie; and it were impossible for him to hold his royall bountifull hand, if this Clergie should not in all its petitions.

petitions; consider the publique good, apprehending it selfe as a member of the Civill state. And hence it is, that though the King hath more power then I belecue was ever tried, or can be defined, to doe his Clergie good, yet they haue not any thing conferred vpon them; which is not according to the lawes, customes, and liberties of this Common-wealth. All that the state Ecclesiasticall enioyes, belongs to it as to a principall member of the body politique; and is derived to it from the supreame Civill head on which it doth depend, and in whom it is vnited to the Civill state. It is no debasing or derogation to a spiritualitie, to bee thus subject to the Dominion of a sacred Soveraigne; for though servitude according to the Civilians proceed not from the law of nature, but of Nations, or at least from nature corrupted, (as the Schooles) yet orderly subjection and superioritie proceed from the instinct of pure nature: for in Heaven there is order amongst the blessed Angels, and in the state of innocency there was superiority, not onely betwixt man and all other creatures, but also betwixt man and woman; and had they lived in Paradise till there had beene father and sonne, there should haue beene *Patria potestas*, or else the fifth Commandement is not morall: and when there had beene many families, there must necessarily haue beene *Regia potestas*, or else the best and most happy life must haue beene without the greatest happinesse of life, which is order. Now the superiority of our Prince over his Clergie is not an enslaving tyranny, but a sweet and a lawfull Soveraigntie, which government as it is due, so it is our duty to obey it; for government and obedience are relatives of equall extent. And as it is no disparagement to the state Ecclesiasticall to bee subject to our supreame Magistrate, so it is great benefit to the Clergie, and a satisfaction to the Laytie; that all the rights and respects that they enjoy or desire, are deriued from that Prince whom both so willingly obey.

§ 2 All that the state Ecclesiasticall doth enjoy or claime, may bee reduced to these two heads; of power, and of honour: and they deriue these from one sole supreme governour, who is fully qualified by his personall eminent authority, to transferre and conferre these rights and respects to them, and vpon them: for as these two the power and honour of the Clergie are inseparablie derived from the supreme Soveraigne, then in being, and not communicable to any other state: so the particular powers and regalities by which they are more especially conveyed; are inseparably and incommunicably appropriated to his royall person. As for instance, the power of the state of the Clergie is originally derived from his Ecclesiasticall supremacie, the honours from his lawes and royall prerogative. All Kings I confesse haue not Ecclesiasticall government, and that because many giue up their right; some know it not, as many of our Kings for many yeares were bereaved of it, in whole, or in some principall parts, by giving and granting to the Pope an inch in breadth with them, and he taking an ell in height aboue them. But when the first defender of the faith *Henry* the eighth was weary of the weight of that intolerable vsurpation, especially when he perceived that the Popes ambition soared vpon the wings and winde of the spirituall supremacie, to a temporall superioritie; The King like *Iulius Caesar*, that he might fully recover into his power the temporalitie, *potestatem Pontificiam, cum Caesaris potentia coniunxit*: hee resumed the Ecclesiasticall power, finding that it was impossible in the course of the moderne policie of the Popes, to bee supreme agent in temporall affaires, while they were the highest in spirituall government; especially since these powers cannot rest really divided in a Monarchie, though they bee really distinct in a Monarch being a mixt person. So that the statutes in the *vicefimo quinto* of *Henry* the eighth, and

Iacob. Cujaci de origine Civilis.

§. 9.

*Theſaurus Po-
lit. Apoteles. 50.
Guicciardino
hiſt. lib. 4.*

*Herbert. hiſtor.
Polonia lib. 2.
cap. 7.*

*Baron. Anal.
Anno 1209.*

*Thuanus hiſt.
lib. 56.*

*Guymer. Com-
ment. prag.
ſanct. tit. de In-
natis.*

*Duarenus pro
libertate Eccleſ.
Gallicana. S. 4.*

*Concordat. Gal-
lic. Leonina Con-
ſtit.*

primo of Elizabeth, which determinately ſet downe this power of ſupremacy, are not lawes inductory of a new, but declaratorie of the ancient authoritie of our Prince, with the ſolemnne ſignification of their reaſumption. And our ſacred Sovereigne doth not alone take this power for his right, but many other Potentates in Chriſtendome that haue not ſo much reaſon: As the Kings of *France, Spaine, Denmarke, Poland, Hungarie, and Sicily*: which three laſt ſtates haue more nearer dependance upon the Pope then any in *Europe*; for *Sicily* hath beene held of him as a ſpirituall feud, as *Poland* and *Hungarie* were both in one Popes dayes; *Benedict* the ſeaventh, converted from Paganisme, and one would thinke, and ſo it ſeemes wholly at the Popes diſpoſall, eſpecially in ſpirituall affaires. Yet in *Sicily* the Kings of *Spaine* doe not onely claime ſupremacie of over-ſeeing, but alſo ſuperintendencie in doing in Eccleſiaſticall employments; and the Kings of *Poland*, whoſe power is moderated by the limits and conditions of an election; *Archiepiſcopos, Episcopos cœnobiar-
chas dicunt, ſuoque arbitrio eligunt*: and the Kings of *Hungarie* doe uſe the ſame power, and with as much reaſon (in a Canonists opinion) as we doe, for though they cannot *de iure*, yet, *Reges Angliæ & Hungariæ conferunt beneficia & privilegia Papæ*. The Kings of *France* haue alwayes beene at defiance with the Pope for this power, renewing continually pragmaticall ſanctions in defence of it, eſpecially in the time of *Charles* the ſeaventh, therefore called *Carolina ſanctio*: which was of that force by vertue of that approbation of the free Councell of *Basile*, that it curbed and caſheered the Popes power, cauſing them to impeach it by appealing from it almoſt in all cauſes; which *Pius* the ſecond perceiving, ſollicited *Lewis* the eleventh the ſonne of *Charles*, to abolish and repeale that ſanction, being enacted in a ſeditious ſchiſmaticall conventicle, which he well approved for a generall Councell

cell when hee was a private *Aeneus Sylvius*, Secretarie to *Fredericke* the third. The King for the present called it in, but his wisdom presently found the mischiefe, and rewarded Cardinall *Balve* very well for vrging him to it; as the Popes Legat, *Rex Cardinalem Balvum in carcerem detruxit ob detrimentum, consilio suo emergens*; and with so much displeasure, that *Philip de Comynes* saith, *Cardinalis Balvensis carcerem horrendum excogitavit in quem inclusus primū erat & quatuordecem annos detentus, non obstante Pontifice Romano*. The Kings of France were ever after stout in the defence of that sanction, till *Francis* the first; in his interview with *Leo* the tenth, did remit the force of it in the *Concordata Gallie*; which made his serious Secretarie *Budaus* say, *Palladium Gallie proditum esse*. The Kings of Spaine in *Casteile* haue some limited spirituall power, by a late priviledge of *Adrian* the sixth, granted to *Charles* the fifth; but when they see their time, they take so much as shall serue their turne; as *Philip* the second seised vpon the temporalls of the Archbishoprick of *Tolledo*, (the Bishop *Caranza* being apprehended for suspicion of new heresie) and when *Sixtus Quintus* sent to him to vndertake a warre against *England*, and told him that he would remit to him all the renewes that arose of that Bishopricke, *sede vacante, prudentissimus princeps respondet se nil de suo Pontifici largiri*: & though at home his power is but what hee pleases to take, yet in other of his territories it is lawfully as large as another Princes; as in *Burgundy* and *Belgia* he hath the same right the King of France once had, as *Charles* the fifth made a statute of *Mortmanie*. *Nullis personis Ecclesiasticis, vel locis sacris licet ullam rem immobilem, absque principis licentia acceptare, vel habere*. And *Philip* the second his sonne publishing the Councell of *Trent* in the Low-Countries, did not let it passe in all points with the full strength of an Ecclesiasticall law, but restrained it with an expresse clause of speciall

Protestatio Regis advers. Concil. Trident. apud Thuan. histor. lib. 8. Philip. de Com. lib. 9. Concilio Pisano. Guicciardino hist. lib. 12.

Budaus de affe. lib. 5.

Marinaus secul. della Espanga.

Thuanus hist. lib. 71.

Theaurus Polit. Apoteles. 49.

*Boley. Heroic.
quæst. lib. I.*

ciall privision, that it should in no wise prejudice or diminish any priviledge the King enjoyed touching possessary judgements or Ecclesiasticall livings, or concerning nomination therevnto. But I will not now enquire whether our Prince hath such a supream power *iure positivo Pontificio*; I am sure it is *iure divino Apostolico*: and supposing such a power, I will for more distinct proceeding, consider the severall streames and strings of this Ecclesiasticall power; and how they flow and are fastned to the head and top of Sovereignty, paralleling them in the severall parts and points of this honour, discovering how they are annexed to these powers, and how they arise, are raised and stand by his Maiesties lawes and Regall prerogative.

*Durandus de o-
rigine jure Civ.
conclus. 2.*

1. Eliz. cap. 1.

§ 5 All power Ecclesiasticall is either power of order, or of jurisdiction, and both these depend vpon the power of supremacie. For though these powers of order and jurisdiction be immediately derived from Christ the mystical head of the Church, in respect of their institution, commission, internall qualification, and deputation to persons to performe them; yet they are mediately derived from our Prince, the ministeriall head of our particular Church, in relation to their execution. For the power of order cannot bee lawfully exercised in these dominions, without the licence and permission from the power of jurisdiction; which power is originally derived from the Kings dominion, over Ecclesiasticall causes and persons. So that it is plaine in generall, that they are dependant on his Crowne and supremacie: To omit the jurisdiction *in foro conscientie*, that depends vpon the power of order, I will for a more particular view of this dependent derivation, consider the severall proper acts and workes of this Ecclesiasticall supremacie, which (as I conceive) may be reduced to these foure. The first worke is reformation of the Church in Doctrine,

Arine, manners, and ceremonies. The second is convocations of Councils and Synods, for the reformation. The third is promulgation of the lawes and edicts, proceeding either from his Highnes pleasure in publick declarations, or the Canons & constitutions decreed or confirmed in his Councils. The 4th is, in receiving of appeales, & giving definite, determinate decisions, restitutions, and deprivations belonging to causes & persons Ecclesiasticall. Now all these acts haue their effects in the power of jurisdiction; for the reforming power of it, is ordinarily & perpetually derived to Archbishops & B. *de iure*, to Arch-deacons and Deanes, *de consuetudine*, to be executed by them in their Provinciaall, Trienniall, and Annuall visitations: but it is principally restrained to the correction of manners. This power is extraordinarily *ad tempus* granted to the Church representatiue in Convocation. It is not turned into a running regencie, rolling round to every particular Presbyter, though it be not an ordinarie standing court, the calling of which is the second worke of supremacy. To this Convocation thus called, there is given power and licence, to deliberate of, to order, and doe all such things as shall concerne the settled continuance of the doctrine and discipline of the Church of *England*, obtaining his Majesties royall consent in the proceeding and determinations (as it is plaine in his Highnesse declaration.) And the lawes they make, take their first force from the worke of his promulgation. But before I proceed any farther, I must of necessity take a little time (though to some it may seeme an impertinent parenthesis) rejoycingly to consider the gracious countenance, our pious Prince so freely shewes to this discountenanced, disabled house of Convocation. Little did any thinke, (no not that able absolute States-man, the last Lord-Chancellour, though wished it) that his Majestie could haue beene so fully and faithfully informed of the ancient power and priviledges

of it, as to thinke of restoring them, seeing not onely in the opinion of the people, but also in the practice of the lower house of Parliament it hath beene long dismembred from that high Court, and lost all the power and priviledges as escheated to the same, insomuch, that it is questioned by some, whether ever it was a member of the Parliament or no. But it seemes his Majestie did soone apprehend it to be an essentiall part of it, and vpon a short search discovered, that though heretofore it was a member, whose nerues were wrested, distorted, distracted and racked from its naturall head, by extention to a forraine: yet there was no *dissolutio continui* (as the Physicians speake) from the head, and therefore not from the collaterall members; and seeing it was but a discontented discontinuance that did cause it to be suspected and suspended, it being now againe contracted and knit most firmly to the head, is vnited as closely to the members, & may safely exercise and enjoy all the power and priviledges that did of right belong vnto it, with the Parliament; for though it was no reason, that it should haue the priviledges of the Parliament, when it was distracted from it, and assembled without it by vertue of the Popes Legates writ, and so the power and purpose of it was forraine, and justly came within the compasse of a *Premunire*, for the Clergie then was no true member of the common-wealth, and so the Convocation cut off from the Parliament; yet when as it is now assembled with it by the same writ of the King, and the Parliament is not compleate without it, being one of the three Orders, and that State which makes it haue competent power in matters Ecclesiasticall, that it is not a meere temporall Court, and that in the judgement of those that had least reason so to esteeme it; for wee finde 1. *Philip. & Maria, c. 8.* That the Legate of *Iulius* the third tooke great care to haue Statutes repealed, made against the Popes supremacy,

1 *Phil. &
Mar. c. 8.*

cie, wherein hee granted them to be authentically made, and consequently, that they had Ecclesiasticall power to enact them, otherwise by reason of nullitie, they had been cancelled and abrogated in themselves. And *Antonius de Florebellis*, an Italian Prelate in his *Panegyrick*, *de restitutione religionis in Anglia* saith, it is done *honorifico universi Anglorum consilii decreto*, in which speech, he supposed their power to decree it, which he would not haue done, if hee had held it to be a meere temporall Court; and he must necessarily haue so accounted it, if hee did not reckon the vpper and lower Convocation Houses, as members of it, exercising equall power with equivalent priviledges. As it was plaine in a particular example in that Parliament; for when Arch-deacon *Philpot* was questioned for some words that passed from him in the Convocation House, hee pleaded, that hee was priviledged to speake them, since the Convocation was a member of the Parliament; and this plea was not refused, but neglected. For they were not ignorant what was enacted by *Henry* the sixth, to wit, that all the Clergie, which be called to the Convocation by the Kings writ, shall fully vse and enjoy all such liberties, as the great men, and Commons of the Realme haue, that are called to the Parliament. And as they had some priviledges, so it is plaine by a Statute *vicefimo quarto* of *Henry* the eight, (though now abrogated) that they had once as much power in their receiving appeales from inferiour Courts Ecclesiasticall, when it was a *Premunire* to appeale to *Rome*, or else-where. The words of the Statute, printed in the yeare 1550, are: The partie grieved, may appeale to the spirituall Prelates, Abbots, Priors, and Proctors, convocate by the Kings writ, in Convocation. So that the restitution of the Convocation, was a worthy consideration in his Majestie, seeing it is as neerly and deerely annexed to his supremacie, as the Parliament is: for his Majestie

*Florebellis O-
rat. ad Phil. &
Mariam.*

*Fox Act. mon.
pag. 1632.*

8 Hen. 6. c. 1.

24. Hen. 8.

Ridleys view
of Ecclesiasti-
call Lawes.

Eusebius in
vita. lib. 3.

Majestie having two capacities of government in him, the one spirituall, the other temporall, by both these hee hath supremacie, and this supremacie is chiefly exercised in the calling, presedencie, and dissolving of the great assembly of the three States, which high Court is not competently correspondent to both those powers in the King, vnlesse the Parliament consist collectiue of spirituall and temporall persons, which it hath anciently (if the Booke *De modo tenendi Parliamenti* be authenticall) for hee makes the vpper House consist of three States, the Kings Majestie, the Lords spirituall and temporall ; and lower of the Knights, Procurators for the Clergie, and the Burgeses ; which both answer the Kings mixt supremacie. So that as he is *supremus Iustitarius totius Anglie*, in relation to the temporalitie ; so he is *supremus*, or (as *Constantine* truely entitiled himselfe in the Councell of *Nice*) *ἐπίσκοπος τῶν ἐπισκόπων*, in respect of the spirituality. But to returne to my present promise, and purpose, which was to shew how the actes of supremacie haue their effects in the Ecclesiasticall jurisdiction, derived to the Clergie: And I am now to shew, what effect the power of promulgation of lawes hath, which is in consenting, confirming, and publishing the Ecclesiasticall Lawes which are agreed vpon in Convocation (not excluding the advice of the Parliament, because the State Ecclesiasticall is not an independant societie, but a member of the whole :) hence it is, that they are called the Kings Ecclesiasticall Lawes, by which the Clergie is ruled in spirituall causes, according to which they exercise their jurisdiction *in foro exteriori & contentioso* ; hence it is, that for this last age, the Ecclesiasticall Lawes of this Realme haue so well agreed with the Civill, because they passe not without the assent of the supream governour. And it were much to be desired, that Christian Princes would not onely permit lawes to be made, and giue force to them

them by their authority, but also that they would vouchsafe their personall preſence, to be Presidents in all assemblies for that end, for then they would proceed and conclude to better purpose. As *Isidorus Pelusiota* writes to the Emperour *Theodosius* the younger, to be resident and president in the Councell of *Ephesus*: *εἰ μὲν αὐτὸς λαμβάνη καὶ, παρῆναι πῶς κεινομένοις ἐν Ἐφέσῳ*: which is, that if hee would be pleased to take so much time, as to be present there, he did not feare, that any thing that should passe, could be faultie; but if he leaue it all to be done by turbulent suffrages, *τίς τὴν Σύνοδον σκωμιάσων ἐξαίρησεται*; Who can free that Synod from scornfull scoffings? his counsell was safe and seasonable, because the cause of feare was very probable and eminent. For in a Councell, where there is a Monarchicall authority, a supream power in one, there will be more dispatch in deliberations, more expedition in executions, than where multitudes of equals sit alone, for they will be many of them over-wise, and most over-wilfull to agree in one poynt; when as every singular person will broach his particular project, and propose it as a publick law, with resolution to be a recusant to all their lawes, if they will not be Protestants to his: and so it comes to passe too often, that they are forced to yeeld to one another, or else no law should passe. Hence is that multiplicite, vncertainty, confusion & contrariety of lawes in some diseased States, than which nothing discovers a State to be more desperately declining, though they are good in their particulars; for they shew the multiplication of ill manners, which *per accidens* begot them, and they are likely to make them worse, because they being appointed to amend them, are disappointed and disabled by their owne crosse contrarieties. As in a naturall body, over-growne and over-flowne with ill humours. If a Philosopher that considers onely a body neither sick nor well, giues that which is good. *ἐν πᾶσι γυμνα-*

Isidorus Pe-
lus. lib. 1. epist.
311.

σφοδρὴν ἐπιξία, (as *Hippocrates* calls it) and when he hath done an Emperick come that considers it as sick, but he knowes not of what, nor the temper of the constitution, but boldly and blindly giues one medicine to all, for all diseases, and at last the judicious Physitian come and consider it as it is, and know what to doe, hee must first vndo all the other haue done, before hee dare administer that which should first haue beene taken, and by this time, the body is either past cure, or desperate conclusions must be tried to recover it. Therefore happy is our State Ecclesiasticall, in whose Convocation our supream Sovereign is President, so that the Lawes passing with his royall consent, are certaine, and easie to be obeyed, by reason of their rarenesse and paucitie, which makes them pertinent, distinct, and free from confusion. And therefore I doe not a little marveile at learned *Baronius*, that since hee doth not deny *Iustinianus* the Emperour the power of making Ecclesiasticall Lawes, he should so scrupulously and busily inquire, what should moue him to meddle with the making of them; when as I doe not doubt, but the Clergie then might request him to it. This last act of supremacie, is to receiue appeales, and giue determinate decisions, and this hath its effect, and is exercised in the Ecclesiasticall Courts. And they doe not exercise any power, that is not derived from this supremacie, either immediately or mediately. So that as the lawes they execute, are the Kings Ecclesiasticall Lawes, so these Courts are the Kings, and all the processes and courses approved by his Majesties Lawes. Therefore now there is no ground for a *præmunire* in them, though the words of the Statute ruane (*to Rome or else-where*) for by (*else-where*) seemes to be meant, the *Romish* power, or Court, which was not then at *Rome*, because the Popes seat was then at *Avignon* in *France*, and not our Bishops consistorie: For I beleue, that Statute was made

Baronius An-
nal. Anno. 528.

Babylonem
Gallicam, vt
Petrarch.
epist. 123.

made to free them as well from the forraine vsurpation, as any other of the King Courts, as the pragmaticall sanction of *France* doth, which was of the nature, and in imitation of it about the same time, by *Charles* the seventh, brother-in-law to *Edward* the third. But however it was then meant, I am sure it cannot extend to them now, vnlesse wee will deny the Kings supremacie over all causes and persons Ecclesiasticall; and then they are not the Kings Courts; but if we grant the Kings supremacie, wee must deny that any of his Courts can incur a *præmunire*. A prohibition, I grant, may lawfully lye there, because it is safe for the whole State, that every jurisdiction should haue its bounds, and keep, or be kept in them. But yet I will not say so in generall, but we must admit them with distinction of prohibitions, one of Law, another of Fact. Now that prohibition which is of Law, according to the expresse words of the Statute, (which are commonly large enough) is the prohibition that is lawfull, as for a prohibition of fact, which is by a sophisticall suggestion sucked and squeezed out of the copie of the libell, without judgment of the Kings Courts vpon it, in my opinion is not right, and is many times the cause of wrong, either in vnjustice or delayes; yea and in abusing of the Statute with the Kings Courts. For the prohibition of law, the most I conceiue it inferres is, to make all the proceedings voide, *Coram non Iudice*. But if I might know, what degree and quality of offence it is, for a Court temporall to hold plea of a meere Ecclesiasticall cause, I should more easily apprehend the scandalous nature of the ground of a prohibition, which it may be, is the same with a writ of error in the temporall Court; since that a consultation doth not ensue vpon that, but after a prohibition grounded vpon a suggestion. So then, all the proceedings of these Courts, haue their power from this last act of supremacie, as well in primatiue pro-

*Iohan. de Paris.
de Potestate
Reg. Concl. 1.*

*Arist. Rhet.
lib. 3. c. 11.*

*Dion. Chrysost.
πεὶ βασιλεί-
ας β.*

Proverb. 30.

cesses of inquisition, as in punitiue processees of execution. As this authentick authoritie is most seene in the proceedings *ex officio*, which are not onely, nor alwayes by oath, (as many are mistaken.) These are by immediate commission, where an Ecclesiasticall cause is criminall, and prosecuted as criminall : And so also the vtmost punitiue processe Ecclesiasticall, which is a writ *de Excommunicato capiendo*, is evidently derived from the Kings power, and issueth immediately from his favour to the Church, that it may be more easily obeyed, and is diuers and variable in sundry governments, and executed by temporall power, being nothing of the nature of the spirituall excommunication, but an accession *concessa permissione ex devotione Principum* (as *Iohannes de Parisiis* saith against *Boniface* the eight.) As for the judgements of Bishops consistories, as they are derived from the power and law of Christ the great Bishop : so they are like the judges of them, who are rather arbiters & *amicabiles compositores* (as *Panormitane*) then Iudges, ruling by the austerity of authority, so that poore defendants may flie to them, as to their altars, who are Ministers of the altar : and in this sense, that which *Architas* speakes is most true, ταυτὸν εἶναι διαιτητὴν καὶ Βασιλῆα, *Idem esse arbitrum & Aram*. And though they haue no forcing power, but from the King, and no power of any force against the King ; yet the greatest and best Kings haue yeelded to them in their advice, not as Prelates, but as they are Fathers in God, (as *Alexander* the great said to his father King *Philip*) ὅτι γὰρ ὡς Βασιλέως, ἀλλὰ ὡς πατρὸς ἀκούω : farre vnlike the Bishops of *Rome*, who will rule the highest Princes, and yet professe themselues seruants of seruants ; which makes mee call to minde, the obseruation of the wisest King *Salomon*, that one of the chiefeest instruments whereby the earth is shaken, is, a servant that rules over Princes. And as they vlturpe rule, so they vsurpe the sword

sword of temporall Princes, and carry it in the spirituall scabbard; and drawing it, doe more hurt in their passion, then they can help by their priviledge; when as they found it soberly and orderly put up by S^r Peter when Christ was at his elbow to heale the greatest wound that hee could make. Thus is it somewhat plaine, how Ecclesiasticall power is derived from the King, as hee is supream head in lawfull and full authority over all causes and persons; which double power in my conceit, the custome of the ancient *Persians* at the death of their Monarch doth fully and fitly expresse, for the lawes are silent: *ἐκ νόμου ὅποτε βασιλεὺς ἀπεθάνῃ*, yea and their *ἁγία πύρ* their holy eternall fire which every one worshiped in his private house as his household god, was put out when the Emperour died.

*Briffonius de
Regno Pontificis
lib. 1. par. 8.*

§ 4 The next thing which I promised to declare, was how the honour of the state Ecclesiasticall is annexed to the power by the Kings lawes and royall prerogative. The honour of the Clergy is contained in renews and priviledges, which are vnited to their powers of order and jurisdiction; which powers although we should grant that simply considered in themselves, they are not distinguished *jure divino*; yet I am sure none will deny that they are distinct, *quoad extensionem, permissione & approbatione divina*, as *Iohannes de Parisiis* doth distinguish the power given the Apostles into six parts, in respect of so many severall acts of execution, the first of which is *potestas dispositionis ministrorum, secundum quosdam quoad determinationem jurisdictionis Ecclesiastica ut vitetur confusio*. And as they are thus distinct according to the execution, and stand so confirmed by the positive lawes of the land; so they haue distinct portions and priviledges according to the same lawes: yet after a different manner, especially in respect of the portion. For the power of order which hath maintenance of diverse kindes, as

*Κτήματος δεσπότης
πληρὴς τιμῶν
ἐστὶν Arist. Rhet.
lib. 1. cap. 5.*

*Ioh. de Parisiis.
cap. 12.*

Bellar. de Cler.
lib. 1. cap. 10.

Hooker Eccles.
Polit. l. 1. §. 15.

tithes, oblations, Gleabland and mortuaries holds them all according to the lawes of this land, as due to the Clergie, for executing the power of order, but by different acts of these lawes; as Mortuaries are permitted, and Gleablands granted, Tithes and Oblations confirmed, and all constrained to be paid. Now tithes that are onely confirmed by the Kings positive lawes, are supposed to be due by some other law of higher nature then the Kings, which is not any forraine law, as *Ius Ecclesiasticum* (as *Bellarmino* calls the Cannon law) it must be then by law divine; or immediately arising from supernaturall and morall considerations, which law we grant to be positive; yet not meereley humane, nor changeable in respect to us: and they must necessarily runne into many grosse errors, that take onely such lawes for positive as are invented by men; and thence conclude them mutable. And therefore I presume that the learned *Selden* doth so vnderstand the positive law, by which hee holds tithes to be due, not in opposition to divine and morall; but as specially diverse from it (as it partly appears in the whole drift of his history) where I doe not beleue that any can finde that hee ever delivers his judgement, denying them to be *jure divino*; so that in my apprehension, and I hope not against his intention, he may doe the Church much good in his relating what wrongs the Clergy in all ages haue sustained. For his history is onely *de facto*, what hath beene done; hee giues not his judgement *de iure* what ought to haue beene done, which if he had, he would assuredly haue pronounced for them; and this I am forced to beleue, when I consider his exact generall knowledge, and the reverent respect he beares to authentique antiquitie. I doe not in this confesse that they are not *iure divino*, because I affirme not them to be due by the law of *Moses*, that is no direct consequence vpon my proposition; for not onely the judicial law which was the common, and

I beleue in most points is still the counsaile of the most wise God (especially in this particular where the ground of the command is morall) doth proportion a tenth part as necessary then to be paid; and though the same necessity binds vs not now, yet the correspondencie of the conueniencie (as I conceiue) doth hold vs as strongly to it as it did that state. For I see no inconvenience in tithes-paying in our state more then in theirs, but onely they were brought home vnto Priests (which onely exception M^r Cartwright makes against tithes:) But I stand not onely vpon this, but I am also partly perswaded, that they were confirmed by Apostolicall approbation, though it bee not in expresse words so set downe. For though the Apostles did all preach the Gospell, yet they did not all write, neither did those that did write commit all to writing which they did teach: for S^t Paul adviseth the *Thessalonians* to keepe the traditions they had beene taught either by word or epistle. And therefore it is freely acknowledged by a famous Orthodox diuine of our owne, *non omnia esse scripta in libris veteris & novi Testamenti, quae Apostoli aut docuerunt aut fecerunt; sed fatemur Apostolos ritus & consuetudines sanxisse, non autem scripsisse*; hence it is probable, that they might by consent confirme them, because it was not onely a custome and a law then in force, and they did not delight to innovate, but vpon necessitie: but also because we doe not finde one word of their abrogation or alteration. Yea it seemes to mee that the author of the Epistle to the *Hebrewes* entitles the Ministers of the Gospell to them by a more particular right, (as Bishop *Andrewes* calls it) *jure Benedictionis*, for it is not onely said that *Abraham* paid *Melchizedeck* tithes as hee was the highest Priest, but that hee received them and blessed him; which implyes blessing to be the duty he performed for them. And whatsoever wee hold of these tithes, I assure my selfe the Primitiue Church did so conclude, otherwise

*Annot. in Rhem.
Test. 7. Heb.*

2 Thes. 2. 15.

*Whittaker. cont.
Bellar. quaest. 6.
cap. 6.*

Heb. 7.

*Benedixit non
tantum vt pri-
uatus ex devo-
tione, sed vt su-
perior ex auto-
ritate.*

wise

wife they would not with such a generall consent haue bound themselves to that meanes and portion of maintenance. I speake of the Church *in statu pacato*, it was otherwise with them I confesse *in statu perturbato*, in persecution; but not out of good choise, but hard chance: For obserue but from the first generall Councell of *Nice*, (not to reckon vpon Provincall Synods, because they doe not bind our state but onely in point of doctrine and example) peruse them till the last of the *Lateraine*, and you shall finde they are plaine and peremptory. And not onely in the acts which in some Councells are erroneous, (as in the second Councell of *Nice*) being the seaventh generall, there is a Cannon very particularly passed with a generall consent; so in the Councell of *Lateraine* vnder *Innocent* the third, where it is particularly set downe, that the English Ambassadors were present. There is a Canon that runs thus, *Statuimus quod solutio decimarum precedat exactionem tributorum*. We haue nationall Councells also as at most Coronations of the Kings before the conquest, and also immediately vpon the conquest; and many generall Charters wherein tithes haue beene confirmed to the Clergy, and that with solemne vowes and imprecations, which dedication to God, if there be no other diuine right, puts the detainers of them into *Ananias* and *Saphira's* case; because that though while it was wholly with them, it was their owne; yet when it was thus separated by their solemne vowes, then sanctified by the solemne act of Bishops; not onely ratifying the Founders vow, but consecrating them with the Church to diuine vses, the nature, property, with the propriety was changed. So that I will conclude from these premises, that the positieue law by which tithes are due to the Clergie, is not meereely humane but mixt and preternaturall, because it binds men as they are members of the supernaturall society of the Church visible: and because they haue bound

Balsomon concil. Nicen. secundum can. 12. Concil. Later. 4. can. 54.

Acts 5.

bound themselves by it in divine considerations. But yet they are enjoyed by the confirmation and constraining power of the Kings lawes: And were it not for the lawes, as they are an vndoubted due, so they would be a perpetuall debt with many; and that out of severall grounds: some desiring to have stipends in stead of tithes, doe too willingly remit them for a sufficient stipend though it bee vncertaine, especially to their successors. But I hope this ground will never be generall, as long as this Kingdome is a Monarchie, for if it is a miserie of free Cities and Democracies, ἐν δὲ ταῖς δημοκρατίαις μὴδὲν ἐκκλησιαζέσθαι --- yet I must needs confesse that at the first originall of Vicarages they had but stipends, but it was vnjust; *Vicarii stipendio sunt contenti*, which was but a permitting provincially constitution. Another meanes whereby the due payment of tithes is impeached, is, the customes of many places: which are lawfull and laudable with these conditions; if they were not the inventions of men, but begotten by time, and if they be as reasonable as ancient; *nam debent esse tam necessaria continuatione quam recta in ortu*: and where the law is defectiue, for customes against law are voyd by the Civill law, if they bee not expresse confirmed by the supream power. With these conditions let customes be enjoyed. But the next pretense is prescription against tithes once paid, and that we may admit with his limitations; as that it extend not to those things that cannot be alienate, that are annexed to the Crowne, or if it stand not *contra statutum postea editum*, and be granted vpon a good custome, and the person qualified, to possesse the thing claimed; for lawfull prescription cannot proceed without as lawfull possession. The want of these lawfull limitations made the Councell of *Laterane* vnder *Alexander* the third, condemne and controule the grand prescription of *Clyentary* tithes continued from *Charles Martellus*. The taking away of which shirking shifts made many de-

Arist. Polit. lib. 4. cap. 13.

Linwood de officio Vicarij paroch.

Cujacius in corp. Vlpian. tit 10.

L. Sacratissima Q. de leg.

Dier. report. fol. 3101.

Duarenus de benef. l. 6. c. 1.

4. Hen. 4. c. 7.

Bartolus in D.
 Q. Sodales. tit.
 24.
 Idem ibidem.

Hospinianus de
 origine Mona-
 chat.

vise another, which priviledge is either of societies or persons, granting immunities from payment of tithes, which pretense of all others (as far as I vnderstand) cannot bee made good by the most favourable forced interpretation that may be; for they are void and nullified according to all the restraining Provisoos that bound a priviledge. For they were granted against the law of God and nature, not onely besides it; there are some revoked by the same power that granted them, as *Innocent* the third in the fourth Councell of *Laterane*. And in this particular Kingdome *Henry* the fourth made many statutes to restraine those priviledges granted to the Friars, especially providing that none should haue any *de novo*; but that which proues them void in this Kingdome, is, that not onely the particular persons, but also their whole societies are dissolved and destroyed; and so they are expired and extinguished with them: *Destrueto Collegio pereunt privilegia*, especially when their renewes are confiscated, & *non privilegiatus prescriptione, non succedat privilegiato*. But when other meanes began to be restrained, they procured appropriations and annexions of benefices presentatiue, not onely in point of patronage, but also they tooke the whole due without discharging any of the duty; which last and worst pretense I will not deny but the wit of man may make it plausible, yet I am sure it will never bee pleasing to the will of God. Monkes and Friars were the authors of these immunities and appropriations, (to omit customes and prescriptions, because they doe not so much wrong, and haue more ground of right:) I doe not accuse the Monkes who lived in the first five hundred yeares after Christ, who lived holy, and laboured in their callings, and had no such priviledges: Neither doe I condemne *Benedict* who was the father and first founder of all that professed a regular life in a sequestered cloyster in the Western Church. For he had good reason

reason so to doe, considering the tumults and many broiles that fell out vnder the government of *Iustinian*, & by reason of the continuall incursions of the barbarous nations into *Italy*. But when he was thus shut vp, many resorted vnto him, admiring his devotion; at last they tooke rules from him, and grew into a fraternitie of the *Benedictines*: and from them sprang many other orders; who living a life far different from other men, bred great wonderment in all, and that admiration procured adoration of their profession, & made those that were able bestow great reuenues vpon them: Yea they did so dote vpon them, that after a while they endowed them, if not with the greatest, yet I am sure the best and fattest part of their Countreyes; insomuch that most of the most pious Princes of Christendome were forced to make a statute of Mortmaine, (like *Moses*, who made the first statute of Mortmaine) for these reuenues which they possessed were in a dead hand, that did no good to the Common-wealth. Whence we may obserue that this statute was rather for the benefit of the Common-wealth, then made out of the dislike of the Church meanes; especially since these Friars were not of the Clergie, but meere Lay-men; and the Clergy had as much reason to desire a law for Amortization as the Common-wealth, because as they had conferred lands and goods vpon them, (for not onely Princes, but Popes were taken with admiration of them) so they were also more charged with the publique, and had lesse meanes. And this statute gaue the occasion to them to procure priuiledges and immunities from payment of tithes. For though at first for a time they came to their Parish Churches, yet when they procured to haue Churches or Chapels of ease for their fraternities; then they obtained vnder *Alexander* the third in the *Laterane* Councell, when hee condemned prescription, to be confirmed priuiledged from payment of tithes of those lands which they tilled them.

Exod. 32.

Duanens de benef. lib. 2. cap. 1.

*Flavius Chen.
Compend. Bulla
rom. I. Paschal.*

themselves; when as *Adrian* the fourth our country-man, his immediate predecessor had revoked or restrained the immunities granted to them by *Paschall* the second. But when *Innocent* the third, who loved to bee doing and vnder doing, restrained the grant of *Alexander* the third, which they perceived did much prejudice their plentifull profit, they procured dispensations from the Pope to haue parsonages appropriate to their houses in more great abundance. For I deny not but some were annexed before, as to the Abbey of Crowland, and others; yet these were granted more by the Popes licence then the Princes authoritie. And then began the Schoolmen to entangle the right of tithes, and their curiositie and their covetousnesse enabled them, and put them vpon it: for when vnder *Innocent* the third, they multiplied into multitude, (as there were sixteene orders set vp in that Century) and hee limited and lessened their reuenues, they sought to maintaine that by right which before they had obtained by wrong, and retained by protection and priuiledge. Then began the contention betweene the Schoolmen and the Cannonists about the right of tithes; and I conceiue *Innocent* the third to be of the Canonists part, because he was the first great advancer of them in the Church, and no free friend to the Friars. This I haue conceived by comparing Church histories with the Cannon law, especially Decretalls: these wrongs of the Clergie were so brought in and vpheld, so continued in our Kingdome till *Henry* the eighth of famous memorie; who either intending a reformation in religion, seised vpon the reuenues of religious houses; or ayming at their reuenues set vpon, rather then finished a reformation, confiscated them to his vse, as escheated as their lands were, and seises vpon their appropriations which were not theirs; but morgaged as it were *in commendam* to them, and he possessed the Crowne of them, and sold them to private men; which

which hold them by as much right as the Monasteries did, & no better. Though some would willingly perswade themselves that they hold them by as right and just law, as they doe any purchased inheritance; for they say, though they were once spirituall, yet now they are made temporall, & lay-tees by the lawes of dissolution; especially in the two and thirtieth of *Henry* the eighth. It is true that those statutes apply diverse law termes, (I will not call them meere law fictions) to those things that properly belong to temporall inheritances, and haue made them demandable by originall writs, and given order of conveyance, by deed, fine, and act of Parliament; which act, as it is bootelesse, so it is contumacie in any private subject to question: onely thus much I hope I may say without generall offence, since I conceiue it the truth, and yet not all the truth; I doe not yet vnderstand how that can bee made manifest to bee a free Parliament in that point. For I doe not beleue, that the lower House did either propose, or generally approue it, though they assented to it. Neither doe I thinke, that King *Henry* the eight did freely propound it out of his owne choyce, but that the necessity of the present time did put him vpon it. And I hope he intended to call it in, if hee had lived. As *Dionysius* the King of *Syracusa* in *Italy*, when his treasure waxed too short for a great imployment: ἐκέλευσε ὅσα ἀναθήματα ἐν Ἀσκληπιείῳ ὡς Βέβηλα ἐπὶ ἀρχαῖς τελεῖσθαι : hee commanded to take the treasures of *Asclepius* his temple, and to proclaime them to be sold in the market, as profane and common commodities, which the *Syracusans* were very eager to buy, because they had Church-bargaines. But when hee had gotten what his necessity required, he presently sent forth an edict, εἰ πὶς τι τῶν Ἀναθημάτων ἤρξατο ἀποδίδωμι τῷ Θεῷ, that if any one had bought those devoted treasures, they should againe restore them to the Church. This course

*Polyæn. in
Stratag. l. 5.*

Consideration
6.

had beene somewhat just, if hee had let them enjoy the treasures, vntill they might haue regained by them what they cost, (as perhaps most purchasers of Impropriations haue.) But that which most hinders me from apprehending it to be a free pure act, is, because the most actiue and spirituall part in Parliament, was pittifully passiue in it, it was at best mixt by reaction in the patient Clergie, who did neither absolutely obey, nor resolutely resist, but silently suffer that to passe, which was not right; and therefore the act was not free from wrong. Neither doe many of the judicious sages of our law so fully approue of it. Yea *S^r Francis Bacon* in his considerations of the Clergie of *England*, dedicated to King *Iames* of peaceable memory, confesses, that hee was of opinion, that all the Parliaments, since the twenty seventh, and thirtie one of *Henry* the eight, stand obnoxious and bound in conscience to God, to doe somewhat for the Church, to reduce that patrimonie; or, that since they haue debarred the Church of her dowry, they should make her a competent joynture. Which opinion of his, is more ingenious, in my apprehension, and advantageously pertinent than theirs, who onely enveigh against the Parliament, and *Henry* the eight the head and ruler of it : which act (admitting the necessity then that vrged him to vse the power of Ecclesiasticall dominion) is not altogether inexcusable, (though this reformation did more wrong to the Clergie, than the conquest :) For what he was to do, was to be done in haste ; and in that routing-rush of reformation, who could expect but the part corrected, must needs be for the time, neere to vtter ruine ; though happily, if the author of the reformation had lived to finish it, amends would haue beene made in some measure. But *Henry* the eight did rather put down the *Roman* Church, than set vp ours ; as *Alexander* the great pulled downe the *Persian* Monarchie, but set not vp the *Grecian*. But to
pull

pull downe one was the onely way to set vp another ; as *Aristotle* rooted out all the opinions of the former Philosophers, to set vp his owne ; or as *Hypocrates*, who being their *Βιβλιοφυλάξ παλαιὰ τῶν ἰατρῶν ἐνέπρησε βιβλία* (as *Zetzes* in his *Chiliads*) he burned the bookes *Chil. 8. num. 155.* of all the ancient Phisicians, to set vs his owne, or theirs as his. So that if a publick reformer begin once to alter, he must of necessity, for the time, stirre, if not remoue more than hee first intended, especially if hee be crossed and curbed by an adversary, that stands strongest by that part which needs reformation, and by that in it, which will best helpe him in the performing of it. For he that will prevaile against an incroaching enemy, that hath a party in his kingdome, must be sure with all apt industrie, to obserue and oppose him in his counsels, by bereaving him of his counsellors and agents, either by taking them away at once, or putting them as exiles from him, or pulling them to himselfe, which is the safest and honourablest course. Now the Pope, who was the absolute insolent adversary to *Henry* the eight, stood by the Monkish part of the Clergie, and chiefly by their rich revenues ; and therefore, it behoved the King, either to reconcile them to himselfe, or vtterly to ruine them (as fell out because they rebelled.) And in the persecution of them, hee ranne a cleane contrary course to the Pope. As I remember, when *Cyrus* tooke *Babylon*, he drew *Euphrates* drie, and made all land ; And *Xerxes* when he went against *Athens*, would haue made all sea, *Σέρξης τῶν πρῶτων τὴν μὲν γῆν ἐποίησε θάλασσαν* : So *Henry* the eight made all Lay and land, when hee intended to be free from the vsurpation of the Pope, and the Pope made all spirituall and his See, when hee aymed at his absolute vnrestrained extravigancie both in See and Scepter. This heat and height of opposition made the King proceed too farre, which, I belecue, hee did somewhat perceiue, in that he did retract in some
par-

Dion. Chrysost.
ὡς ἐὶ Βασ. γ.

33. Hen. 8.

Iovius de vir.
illust.Baronius Anno
759.Bellarm. de
script. Eccles.Guicc. hist. l.
11.Guicc. Hypomn.
Polit. 123.

particulars, from the first course: As in erecting some Episcopall Seats, and more Cathedrall Churches, out of the ruines of Monasteries and Priories. And in that hee made of the appropriation of *Royston*, a Parish-Church. And I presume, he might haue proceeded farther, if hee had not beene soone after cut off by death, and hindred by profane and sacrilegious instruments while he lived, who, I perswade my selfe, were the same men and meanes, that tried to procure the dissolution of the Bishoprick of *Durham* by act of Parliament, during the nonage of *Edward* the sixth. So that the unhappinesse of *Henry* the eight, is, because men judge by the event, not knowing the intent (as *Paulus Iovius* exclaimes of him.) In my minde, hee may be well paralleled with *Charles Martellus*, the Champion of the Church, who, when hee defended the Pope, was the first that was called *Christianissimus* among the *French* Kings, by *Gregory* the third; yet hee was the first that robbed the Clergie in *France*, by giving *Clientary* tythes, which they call *feudall* to his followers: yea and hee deposed the Archbishop of *Reemes*, and disposed of the Bishoprick to one *Milosa Canaleire*. So *Henry* the eight had first the title of the Defender of the Faith, for publishing a booke against *Luther*, which (*Bellarmino* saith) *Roffensis* wrote, and presently after fell foule vpon the Clergie. So that, (I beleue) the Pope repented of the title, and was ready, not to giue him so good a title, as his predeceffour *Iulius* the second gaue *Lewis* the twelfth of *France*, in his Bull, which *Guicciardine* notes to proceed of malice, *Nella nominazione, non piu Christianissimo, ma illustrissimo*. But let him be as bad as they will make him, yet I dare excuse him, as *Baronius* doth *Martellus*, and say of him as *Guicciardine* said of the Popes, that hee was an honest man, because he was not more wicked than most men. I haue in this as farre as I am able with a good conscience, cleared our State from the forraine fame of sacri-

sacriledge. But I cannot free particular men from it, which have no pretence for what they detain, or take from the Clergie, but onely that they are not convinced that there is such a sinne as sacriledge; and that because they hold not tythes due *iure divino*, and that because they desire still to hold them by the law of the land. And that they may more colourably continue it, they hold no such sinne as Symonie, that the presented may make a symonaicall contract, whereby they are confirmed and corroborated in their sacrilegious usurpations. But I will not dispute the poynt, whether there be any such sinne as Symonie, in relation to a private presentation without respect to orders taken with it. But I am sure, none will deny, but where is a symonaicall contract, there is perjurie in the Instituted. As for sacriledge, I grant it is not easie for men that are guilty of it, to be convinced that it is a sinne. For sinnes of omission cannot so quickly and sharply touch the conscience, because they are the breach of an affirmatiue law, which doth not so strongly check the vice, as informe to the dutie; especially when pleasure or profit have bribed the judgement. For I feare, some hold stolne tythes, the sweetest part of their inheritance, as it is said by the Epicures; οὗτοι πμῶντες τὰ γλύκιστα πάντα, τὸ μελὶ μερὸς δεκάτων ἐκαλῶν Ἀμβροσίας: who doting vpon voluptuous sweet delicacies, called hony the tenth part of the *Ambrosia*; and perhaps that sect set vp the trade of Bee-mongers in *Athens*, (as *Synesius*) νῦν Ἀθῆναι ἔχον οἱ Μελιτεργοί. So I am afraid, the tickling sweetnesse of tythes, is the cause, why the smart and sownesse of sacriledge is not felt, nor tasted. And therefore, in my opinion, *Thomas Aquinas* Thom. 2a. 2a. doth well, to make sacriledge, *speciem luxurie*; so that it may be a sinne, and yet they never be convinced of it. I am sure, not onely the ancient Fathers of the most pure primitiue Church, but even the godly Emperours did esteeme it a sinne, and that in a high degree, that when

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they

Zetzel hist. Chil. 7.

Synesius epist. 136.

Thom. 2a. 2a. 9. 155. A. 10.

Theod. tit. de
Indulg. Crim.

Theod. eodem
tit.

Harmenopplus
Promp. Jur.
Civ. l. 6. tit. 5.

Quicumque 17
c. 6. q. de Jur.
Patronatus.

43 Eliz. c. 2.

they granted generall pardons at Easter, and other solemne times, they excepted sacrilegious persons : As *Theodosius* the great, *ob diem Pasche, quem intimo corde celebramus, quos reatus astringit, carcer inclusit, solvimus ; attamen sacrilegus maximè à communione istius munieris separetur* : So also *Gratian* and *Valentinian* ; *Religio anniversaria observationis hortatur, ut omnes periculo carceris, & à metu pœnarum eximi inbeamus : verùm eos excipimus, quos scelera graviora compulerunt, ut qui sunt sacrilegi & sepulchri violatores*. So in many of the Novels ; *τῇ δευτέρῃ τῶν παλαιῶν*, vpon Easter day set all persons free *μὴ πρὸς ἱεροσυλὸς ἐσὶν*, but if any be guilty of sacrilege, let him be kept still in hold. So that you see, it was reckoned *inter extraordinaria crimina* in those dayes ; and so it would be thought with vs, if profit did not blinde the judgement in the payer of tythes, and indiscreet covetousnesse leade many Clergy-men to make no distinction betwixt free and friendly compositions with a bountifull Patron and sacrilege. In my poore judgement, the Canon Law is but just, in decreeing, that *Si patronus Laicus ad inopiam fuerit reductus*, hee must haue some competent sustenance from the incumbent, especially if he haue not beene sacrilegious, and so by Gods judgement brought to it. And I doe conceiue, that this may be, notwithstanding they doe not charge any parsonage with annuitie rents, which is prohibited by the statute of *Elizab.* Thus it is plaine, that the revenues and maintenance of the Clergie are possessed by the Kings Lawes, and may be demanded as due by them.

§. 5. The other part of the honour of the Clergie, annexed to the power of order, is in priviledges, & immunities, by which this power is exercised with more ease, delight, and respect ; and, as it were, with the whole man without distraction. Now all the priviledges the Church doth enjoy or desire, arise, and are raised by the Kings

Kings lawes, and royall prerogatiue. As that ancient-of-
 ten-confirmed *Magna Charta* doth fully confirme all for- *Magna Char-*
 mer priviledges of the Clergie. And that was then favour *ta cap. 1.*
 enough, for then they had priviledges to a surfeiting sur-
 plussage, but now the Clergie stands in more need of them,
 and they humbly expect them onely from the favour of
 their Prince, who hath a plenitude of power, to grant
 more and larger priviledges, than ever they will desire.
 For all priviledges are granted in relation to some Law,
 and the power of an absolute Prince is aboue all Lawes,
 (as *Dion Chrysostome* told just *Traiane*) *Βασιλεὺς τῶν νο-* *Dion Chrysost.*
μῶν μείζων : or as the same Counsellour to the same Empe- *τῶν Βασιλείας*
 rour, *τῶν νομῶν Βασιλεὺς ἐπάνω* : which *Cujacius* explaines *γ. κ. τ.*
 and limits to coactiue correctiue Lawes, which *Dion* *Cujacius obser-*
 saith, began in *Augustus* dayes, *μηδὲν τῶν πάλαι Ρωμαίων* *vat lib. 9. c. 11.*
νομῶν ἐδωδὴ λελύσθαι : none of the ancient *Romans* were freed *Dion hist. l. 53.*
 from lawes, *τετέστιν ἐλδ' ὅτι ἐκ τῆς πάσης ἀναγκῆς νομίστως εἴσι*,
 that is from the necessity of obeying. And I doe beleecue,
 that the Scriptures (seeing that they say more for the
 right of Kings, than any booke in the world) doe, if not
 fully set downe this power, yet permit it with approba-
 tion in some cases, especially for the publick good of the
 Church, which, I am sure, is a farre more conscionable
 and commendable course, than to accommodate religi-
 on to serue the turne of the State (as that judicious *Ami-*
ratus vpon *Tacitus*) *Bisogna accommodar la ragione di*
stato alla religione, & nan la religione, alla ragione di stato.

Our King then being a most absolute Monarch, hath
 this prerogatiue, and from that wee haue and hold our
 priviledges, not from that written prerogatiue, abstra-
 cted out of *Fitzherberts* Abridgement, by *S^r William*
Stanford, whereby the Kings Exchequer hath many pri-
 viledges, and peculiar processe (as the *Civilians* call them
privilegia fisci, fiscus ægyptiæ præξίαν habet.) But from an vn- *Cujacius ob-*
 written vnrestrained right of dominion, whereby he hath *ser. v. l. 2. c. 24.*

plenarie power, not onely to make legall propositions of validitie, or voyde in their first institution, or to interpret them either by declaring them to bee corrected in some poyntes and cases, especially if hee correct them by a more particular expresse pressing law, as hee may correct the law of nature by the law of nations; the law of nations, by the law of armes; the law of armes, by the law of particular Leagues; and all by the power of dominion: or restraints them in respect of some persons, or publick societies; but he may dispence also with them, since some penall statutes are made with relation to his power of pardon after the act; therefore it is not so much to exempt them from being obnoxious to the punishment, by pre-interpreting that it was not intended to extend to such persons; for so the priviledge is not against law, but besides it, or aboue it. Yea there are statutes dispensatorie; as that of the pluralitie, and non recidencie which the Archbishop of *Canterbury* limits by his approbation. And priviledges must necessarily bee where there are multitudes of statutes, which be so strict in point of injunction, as if the makers of them had not considered, that politique lawes must be made with respect to morall possibilitie, as what men may doe; and yet the punishment of their transgression is not expressed, but left to the pleasure or displeasure of the King. But these are not the priviledges that the Kings royall prerogative doth grant, as immunities and impunities, for then the lawes should bee onely punitive, if there were onely vse of protections and pardons: but as lawes are also remunerative, so Princes haue power to reward after a priviledging manner, and chiefly in our Kingdome, where it seemes to be on purpose omitted by the written lawes, and left to the Kings pleasure and power; especially concerning Ecclesiasticall persons, who haue most neede of them, and may now as freely enjoy them as any other persons. For though heretofore

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Eccles. Anglicana
Canon. 41.

it was prejudiciall to our Kings to grant priviledges to all Ecclesiasticall persons, when they were so encreased in multitudes, and overgrowne in magnitude for the whole Kingdome, and the Popes would confirme them as irrevocable: yet now they are but few in number and small in power, and the King may call them in when hee pleases. This want of these priviledges hath beene the cause of much evill in the Church, and the more they are impeached by those that professe themselves the maintainers of the Kings peace, lawes, and royall prerogative, the more will the state Ecclesiasticall runne to ruine. And they are much infringed in our Vniversities, which I am forced to complaine of, with feare, lest that fall out which happened to the Vniversitie of *Prague*; which was utterly ruined by *Charles* the fift, taking the priviledges away at *Don Lewis* desire. Whereas *Francis* the first of *France* fearing and favouring the Vniversitie of *Paris*, restored all the priviledges which *Lewis* the eleventh had taken away vpon a just ground of sedition, which hath made it to revieve and flourish ever since. But there are some politiques that hold it a needlesse thing, to bee any way indulgent to silly Schollers, as *Cujacius* saith out of *Galen*, that they expressed weake men vnder the title of *scholastici*: they make meere *Δρῦδες*, Iohn a noakes of them, but the fault is in themselves according to the *French* Proverbe, *Qui se fait brebis le loup la mange*: For though the Clergie bee weake of it selfe, and tempt the contemners of it to over-top and over-turne it: Yet since we haue a pious prudent Prince, that is royally ready vpon the first appeale, to protect and relieue his poore Clergie: we are not to be pittied, if we neglect to implore his supream assistance. And thus it is something evident how the honour of the Clergie annexed to the power of order, is granted and sustained by the Kings lawes and

Dionotus Ador.
hist. cent. 7.

Cujacius in
sent. Pauli lib.
1. tit. 12.

royall prerogative. I must now in briebe shew the like of the honour annexed to the power of jurisdiction.

§ 6 The power of jurisdiction which I doe here intend, is not that deligated power which is in Bishops, Vicars, or Officialls; nor that power Archdeacons and Deanes enjoy, either by custome or priviledge: but that ordinary power which is in Bishops. To this power of jurisdiction there is honour annexed by the lawes of this land, and the Kings royall prerogative: which I divide as before, into revenewes ordinary, and priviledges; the revenewes are their temporalls, and part of the perquisits, called the *Census Cathedralicus*: the first of which are given and granted by the Kings royall bounty, & confirmed by the lawes; the other are set downe and approved by the same lawes. Bishops temporalls are annexed to their fees by the Kings gift, and are as it were their Gleab, but are indeed their Baronies which they hold of the King *in capite*, and performe services for them; and therefore they are as it were wards to the King during the vacancie: *qua*

Stanford pre-
rogat. cap. 1.

Linwood de im-
munitatib. Ec-
clesie.

Duarenus de be-
neficijs. l. 3. c. 11.

Augustinus de
Ancona de po-
test. P. P. quest.
22. Art. 9.

Panormitan. in
Decret. Ver.
Conf. §. 6.

ratione Baronie (as Linwood) *ad Episcopum spectare possunt, Dominus Rex custodiam habet*; (as Duarenus sayes of the Kings of France) *Princeps quam diu vacat Episcopalis sedes, feudorum lege, pradiorum omnium administrationem suscipit*. But these temporalls are not to be restored till consecration, and so seeme to be annexed to the power of order in Bishops; for their consecration (according to the scho- lasticall Canonists) is but *perfectio characteris*, which they at first received when they tooke the order of Priest- hood, and so seeme not properly annexed to the power of jurisdiction: for before consecration, vpon election and confirmation they may exercise the power of jurisdic- tion, though not of order. *Episcopus electus & confirma- tus potest exercere quæ sunt jurisdictionis, non quæ sunt or- dinis Episcopalis ante consecrationem*, (as Othobone vpon Linwood)

Linwood) *suspendere potest à beneficio, non ab officio; quia* *Linwood lib. 1.*
ab officio suspendere, est à potestate ordinis ordinaria. But *de constit. 12.*
Iustice Glanvil seemes to intimate that they were resto- *Glanvil lib. 9.*
 red, when they were but Lords elect, because *electi ante* *cap. 10.*
consecrationem homagia sua facere solent, but whether it
 were *de jure* or *de gratia* (as the learned in the Common
 law distinguish,) I leaue to them to determine; and
 thinke it great happinesse for the Bishops, and the great
 honour of our moderne Kings, that they are so fully resto-
 red at all, since they haue as much power, and may pre-
 tend as much reason to seise the temporalls into their
 hands as well as others. ---- But our Royall Soveraignes
 pious Father, set a good example to his Majestie to fol- *1. Jacobi. c. 3.*
 low; for in the first yeare of his raigne hee enacted a sta-
 tute to prevent all diminution of Episcopall revenewes,
 though it were to alienate them to the vse of his Crowne:
 yea though it were but in exchange for impropriations,
 (a course which was too common in *Queene Elizabeths*
dayes,) insteed whereof our Kings haue out of royall in-
 dulgence given some licences for Mortmaines. If this
 redresse had come before they had beene too much im-
 paired: Bishops would not haue desired so many Com-
 mendams, nor Rectors of Parishes made vse of the statute
 of pluralitie. To their revenewes in these temporalls,
 there are many honourable priviledges annexed, as they
 are Barones; So that Bishops haue the priviledges of Ba-
 rons in the Parliament, and that vpon good ground, since
 they hold of the King, and performe the services belong-
 ing to them; (as *Mathew Paris*) *Episcopi de rege tenent in* *Mathew Paris.*
capite Baronias, & faciunt omnes consuetudines regis, & si- *Hen. 2. p. 120.*
cut ceteri Barones debent interesse iudiciis regis cum Baro-
nibus. Now the Bishops (especially since the reformation)
 are ready and willing, not onely to take the oath of ho-
 mage, which some denyed heretofore, as *Thomas Becket,*
 and

*Glanvil. lib. 9.
cap. 1.*

*Cajetan in se-
cund. secunda.
q. 184. art. 5.*

and *Glanvill*, who was the chiefe Iustice, seemes to countenance it, by saying *Episcopi consecrati non solent Domino Regi homagium facere de Baronis suis, sed fidelitatem*. The present Clergy I say is not onely ready to take the oath in the old favourable free forme, [*salvo ordine*,] but as it is now more strictly obligatorie by putting in these words, [*in verbo veritatis*;] and leaving out the former. Which oath may be taken without any suspicion of Symonie, (as *Panormitan*) *Homagium, vel fidelitas ab Episcopo prestari possit, citra periculum Symonie*: and *Cajetaine* the learned schooleman doth in this agree with this ancient able Canonist; *Episcopus legitime iurare potest Homagium quoddam vel fidelitatem, quia nil in isto iuramento continetur, circa curam animarum*; for that is taken in relation to their temporalls which they haue from the Kings favours; not in relation to their consecration, which they haue from the qualifying grace of God, which was well expressed anciently in their stile [*Dei gratia Episcopus*] and now by [*providentia divina*,] so that seeing they perform the same services, they may enjoy the same priviledges with the Barons. Now as all priviledges, so these that they enjoy common with them, are besides and aboue the common course of law. For instance, as they are Assessors in Parliament, they may appeare by Proxie; as they are witnesses, they may sweare onely *Vissu Evangelii, verbo sacerdotis*; as Barons, by their honour; and when they are at any time Delinquents, they should bee tried by their Peeres, (if they were tried as Bishops, and not first degraded;) and so some haue beene tried, vntill one appealed from them to the Pope. And good reason in those dayes they had, (if not now) to bee so tried, because many of the Bishops of those times were of the Princes of the nobilitie; (as may be seene in Bishop *Godwins* Catalogue of Bishops:) so that when Peeres were Bishops, why should not Bishops

shops bee Peeres. It seemes in *Richard* the seconds dayes they were so accounted, for when hee did make vp the number of the twelue Peeres of the land, he chose *Brenstingham* Bishop of *Exeter* one of them, which (I conceiue) hee would not haue done if hee had not beene a Peere before: and I am the rather perswaded so to thinke, becaule *Richard* the second extends the statute of *Scandalum magnatum*, to Bishops as well as Dukes, Earles and Barons vnder the title of Peeres of the land. Besides these priuiledges which they haue as they are Barons, the Kings of this land haue beene pleased out of their Princely favours to bestow many freedoms vpon them, especially on the Archbishop of *Canterbury* as amongst other ordinary and knowne, one against his Majesties written prerogatiue, as that the land held of that Bishop shall not be Ward to the King. And I beleeeue the high estimation of that See abroad might mooue them to it, for they are not onely stiled Primates of all *England*, and Metropolitans, but Patriarches; *Patriarcha minorum gentium sunt Cantuariensis, Aquiliensis, Biturgiensis, & Gradenfis*, and the most lawfull Legats of the Apostolicall See: *Legati nati dignitas Archiepiscopatu Cantuariensi, Remensi, Eboracensi, & Pisano annexa est*. This forraine respect might mooue them more particularly to honour them, though they haue alwayes most highly favoured Bishops in generall, in somuch, that they haue made them not onely *à sacris*, but *à secretis*, which is safe for a King, and no distraction to a Bishop in his calling; with *Lipsius* limitation *interesse eos posse imò debere, sed rarerè cum de rebus planè seriis agitur, & quæ tangunt universum statum*; then should not Princes need to forbid Bishops the Court without they were sent for, (as *Baronius* saith, *Iustinian* was faine to doe). Thus I haue brifely discoursed, though not fully discovered some thing of the relation betwixt the state

2. Rich. 2. c. 5.

Stamford. prerogat. cap. 1.

Duarenus de gradibus Episc. cap. 9.

Lalins Zecch. de statu Legat.

Lipsius Annot. in 3. Polit.

Baron. Annal. 3. Anno 538.

Ecclesiasticall and the Civill; which I haue done without
advising in any thing to an alteration, or devising
any thing for innovation; and with sub-
mission to the licence of authority
and the judgement of
the learned.

* * *

FINIS.



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